

Management-Union **ARBITRATION**

A Record of Cases, Methods, and Decisions

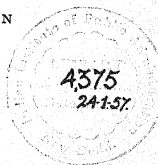
MAXWELL COPELOF

Impartial Arbitrator and Permanent Umpire under Numerous Union Agreements

FOREWORD BY JOHN R. STEELMAN



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MANAGEMENT-UNION ARBITRATION

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FIRST EDITION

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CONTENTS

<i>Foreword by John R. Steelman</i>	xi
<i>Preface</i>	xiii
1. APPROPRIATE QUESTIONS FOR ARBITRATION	1
Contract Interpretation	2
Matters Not Covered by Contract	7
Arbitrating Terms of New Contracts	10
Controversies Involving Union-Membership Relationships	12
Jurisdictional Disputes	12
Legal Status of Labor Arbitration	14
2. HOW TO CHOOSE AN ARBITRATOR	17
Selection by Parties Themselves	18
Designation by Third Party	22
Permanent Versus Temporary Arbitrators	23
Costs of Arbitration	27
Use of Tripartite Boards	28
3. PREPARATION AND PRESENTATION OF CASES	30
Deciding Upon the Exact Question or Questions to Be Arbitrated	30
Advance Preparation	32
Presentation of Case at Hearing	43
4. CASES INVOLVING DIRECTION OF WORKING FORCE	51
Demotion for Physical Unfitness	51
Refusal to Perform Work Assigned	54
Improper Rejection for Physical Unfitness	56
Lack of Qualifications for Better Job	58
Promotion Ordered on Temporary Basis	60
Promotion Outside of Bargaining Unit	62

Selection of Supervisors Reserved to Management	63
What the Well-dressed Employee Shall Wear	65
Forced Retirement of an Employee	66
Reemployment Not Mandatory	69
Job Belonging to Union	71
Union Taking Employee Off Job	72
Superseniority Versus Capability	73
Right to Assign Special Duties	74
Withdrawal of Special Duties	75
Restriction of Output Improper	76
Refusal to Perform Assignment Unjustified	78
Increased Work Load Not Permissible	80
Change in Work Schedules Justified	81
Seven-day Operations Upheld	82
Unauthorized Rest Periods	82
Improper Change in Working Conditions	83
Right to Assign Workers to Machines	85
Less Desirable Job Assignment Upheld	87
 5. UNION RIGHTS AND PREROGATIVES	 88
Signed Application Valid Evidence of Union Membership	89
Insufficient Proof of Resignation from Union Under Escape Clause	91
Good Standing at Time of Contract Execution	94
Nonpayment of Dues Temporarily Excusable	95
Damages for Dues Delinquency Disallowed	96
Disputed Coverage of Bargaining Unit	97
No Seniority Rights for Excluded Employees	99
Union Right to Challenge Work Assignments	101
Union Proper Judge of Seniority Privileges	102
Right to Assess Variable Initiation Fees	104
Higher Initiation Fee for Nonstrikers Disallowed	106
Adequate Union Representation in Grievance Matters	107
Bulletin Board Rights	107
Scheduling Work on Seniority Basis	108
 6. DISCHARGE AND OTHER DISCIPLINARY CASES	 110
What is "Cause" for Discharge?	110
Inconclusive Evidence to Support Discharge	113
Discharge for Fighting Sustained	115
Discharge Modified to Layoff	116
Seniority Restored	118
Layoff for Faulty Work Not Justified	119

Discharge for Misconduct Sustained	121
No Special Immunity for Shop Steward	122
Insufficient Basis for Discharging Union Committeeman	124
Refusal to Work Scheduled Hours Held Insubordination	126
Reinstatement After Unauthorized Strike	128
Culpability on Both Sides	130
Insubordination Warranting Layoff Only	132
Layoff Proper Penalty for Sleeping on Job	134
Penalty for Sleeping on Job Layoff and Not Discharge	134
Discharge for Fooling Around	136
Discharge Permissible Only By Mutual Consent	137
Discharge for Low Production Reversed	138
Discharge for Drinking Upheld	140
Penalty for Drinking Modified	141
Two Wrongs Don't Make a Right	142
Discharge or Resignation	144
"He Who Is Without Sin . . ."	145
Discharge of Militant Steward Sustained	148
 7. WAGE DISPUTES ARISING OUT OF CONTRACT	 151
Rates for New Jobs	152
When Is a Job a New Job?	154
Rate Adjustment on Reallocation of Work	155
Reevaluation of New Job	156
Rates Set After Engineering Study	159
Rate Equalization Between Day Workers and Pieceworkers	161
Improper Classification of Jobs	163
Equal Pay for Equal Work	165
Rate Inequities Between Two Plants of Same Company	167
Intercompany Inequities	168
Contract Clause Providing for a Cost of Living Adjustment	169
Arbitrability of Dispute Over Job Classifications	170
Arbitrability of Personal Rates	172
Rate Reduction Not Permissible Under Merit Rating Plan	172
Merit Increase Because of Additional Duties	175
 8. INCENTIVE PAY DISPUTES ARISING UNDER CONTRACT	 177
Right to Change from Day Work to Piecework	178
Rate Adjustment Warranted Because of Use of Different Materials	181
Piece Rates Adjusted on Basis of Competitive Conditions	182
Pre-existing Differential Not Restored	183
Rate Change on Change of Work Assignments	185

Rate Adjustment on Change in Job Conditions	187
Rate Adjustment After Stinting	190
Reasonable Expectancy of Incentive Earnings	191
"Extra" Not Warranted	194
Rate Reduction Permissible on Discovery of Error	195
Rate Allowance for Change in Materials	196
Guaranteed Work Load or Guaranteed Earnings	198
Average Earnings Not Payable When Output Retarded by Extraneous Factors	201
Allowance for Unavoidable Reduction in Output	204
 9. CONTRACT CLAUSES ON "FRINGE ISSUES"	 207
Guaranteed Work or Pay	208
Improper Distribution of Overtime	210
What Overtime Rate Is Applicable on Shift Changes?	212
Extra Pay for Doing Work of Absentee	214
Extra Pay on Change of Starting Time	216
Claim for "Wash-up Time" Pay Rejected	218
Equal Pay for Men and Women	219
Overtime Payable Under Two Separate Contract Clauses	220
Holiday Pay in Lieu of Sick Leave	222
Night Shift Premium for Custodial Employees	224
Basis for Computing Vacation Pay	227
Vacation Rights on Resignation	230
Vacation Eligibility of Laid-off Employees	231
 10. DISPUTES NOT CONTROLLED BY CONTRACT CLAUSES	 233
Promotion at Discretion of Management	234
Management Right to Select Supervisors	236
Average Earnings Not Guaranteed	238
General Adjustment in Piece Rates	240
Speed-up or New Job?	242
Wage Guarantee Not Expressly Provided	245
Shift Change Ordered at Union Request	246
Adjustment of Individual Grievances	248
Veterans' Rights Versus Seniority	251
Should Emergency Shutdown Be Regarded as Layoff?	253
Pay Basis for Handling Grievances	255
Straight Time Allowed When Holidays Not Worked	259
No Contract Clause Specifying Daily Guarantee	262
Employees Cited in Arbitration Without Their Consent	265
Union Rights in Rate Setting	268
Unsettled Grievances Under Prior Contract Not Arbitrable	270

11. ARBITRATING NEW CONTRACT PROVISIONS	272
Wage Increase Conditioned on "National Pattern"	273
Pattern Wage Increase But with Fewer Holidays	276
Inability to Pay Not Proved	279
Cost of Living Adjustment	281
The Union Shop Under Taft-Hartley	283
Novel Combination of Union Security Provisions	285
Union Shop Award After Election	286
Conclusive Reasons for Union Shop Award	288
Maintenance of Membership Ordered	289
Seniority for Supervisors	290
Departmental Versus Plantwide Seniority	292
Overtime, Holiday Pay, Vacations, Etc.	294
Vacation Plan Embodied in Contract	296
Basis for Computing Vacation Pay	297
Special Conditions for Holiday Pay	298
 12. WHEN TO MEDIATE	 300
Curtailing Maintenance Work	301
Proposed Solution for Production Problem	303
Compromise Wage Adjustment	305
Rates Applicable on New Assignments	306
Adjustment in Work Load	307
Allocation of Work Assignments	308
Reinstatement Terms Agreed On	309
Reasonable Enforcement of Working Rules	310
Penalty for Fighting Mitigated	312
Leniency in Case of Pilfering Recommended	314
Carrying Technicalities Too Far	317
Disciplinary Action After Work Stoppage	319
Basis for Good Management-Labor Relationships	321
 APPENDIX A—COMPANIES INVOLVED	 326
 APPENDIX B—UNIONS INVOLVED	 335
 INDEX	 343

FOREWORD

Labor-management arbitration has properly been called a substitute for economic warfare. It is an excellent substitute, indeed, as Mr. Copelof shows in this authoritative book illustrated by cases of the typical or frequently met problems that can be successfully handled through arbitration proceedings.

Ten or fifteen years ago a book such as this could hardly have been written because arbitration had not then achieved the status of a full-fledged profession. It is a source of gratification to me that in my ten years as Director of the United States Conciliation Service I was able to encourage such men as Maxwell Copelof to take up arbitration work as a permanent career. Their contributions to improved labor relations have been great. Mr. Copelof shows the whys and wherefores in arbitration proceedings and how they can make for continued harmonious relations between labor and management.

JOHN R. STEELMAN



PREFACE

More than twenty years ago I became interested in commercial arbitration. In those days, the idea that businessmen could get a quick and satisfactory settlement of disputes among themselves through resort to arbitration was just gaining a foothold. Through my own connections I saw the advantage of avoiding costly and protracted litigation by agreeing to arbitrate disputes of commercial problems.

In my capacity as Code Administrator for the NRA, the need for the same sort of expeditious treatment of disputes by management and labor became readily apparent. I urged the employers and the labor officials in the industry whose code I was administering, to arbitrate their differences. Many of them agreed to do so. Gradually some of the principals began to seek my services as an arbitrator. More often, they requested mediation. But when there were disputes that could not be settled through the process of conciliation or mediation, arbitration was definitely indicated. That is how I happened to have first accidentally and then deliberately engaged in arbitration as a career activity.

For a few years after the passage of the Wagner Act, there was considerable resistance on the part of many industrialists to acceptance of unions at all. As they found they had to live with unions and to recognize their desirability and their fixed place in the business structure, they also began to accept the principle of arbitration of labor disputes as being preferable to the use of economic force. Of course, in some few lines of business, these same views had been adopted years previously. In fact, in the garment industry, with which I used to be associated directly, labor arbitration had been generally accepted many years before the NRA. But acceptance of arbitration as a technique for settling disputes between management and unions has not in all cases been accompanied by adequate

understanding of how arbitration cases should be prepared and presented.

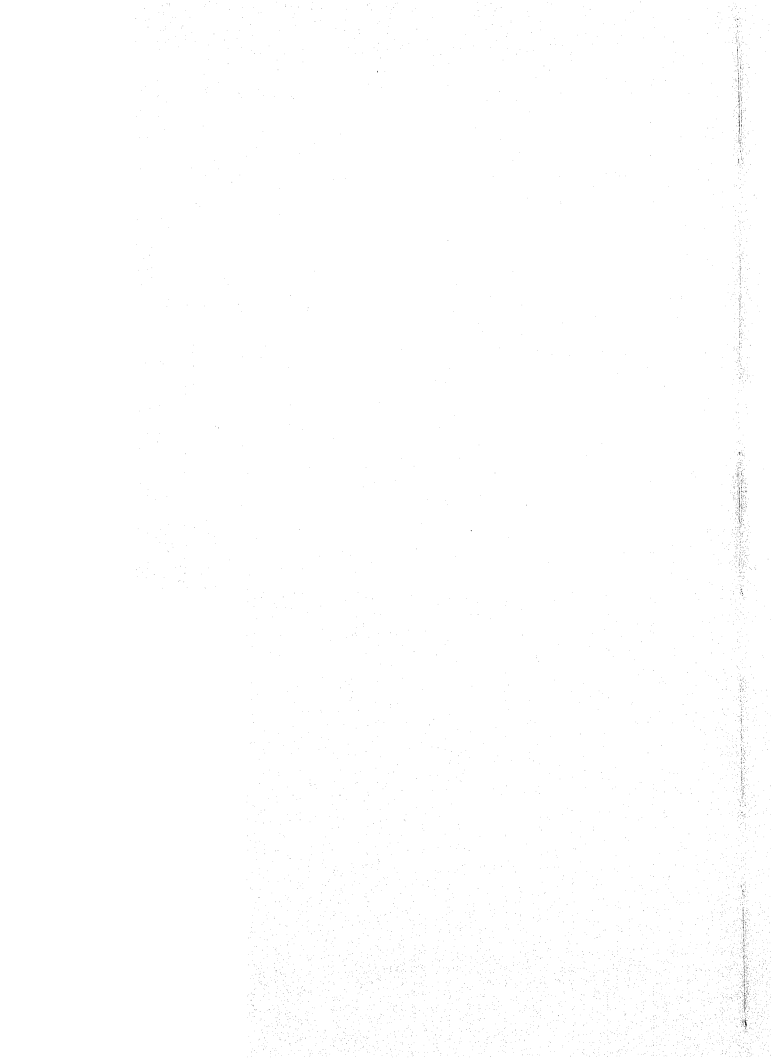
In the past ten years, I have been impressed over and over again with the lack of knowledge and lack of preparation on the part of the spokesmen for management and labor in arbitration proceedings. It is not enough to have a good case. The case must be presented well, and good preparation ordinarily includes a careful review of what has happened to others in comparable situations. Out of the hundreds of cases in which I have been privileged to serve as arbitrator, I have selected a few score that illustrate most, if not all, of the typical problems that ultimately are referred to arbitration. The summaries of these cases can contribute, I hope, to a better understanding of arbitration proceedings and how they should be conducted. To provide such information to management, to labor organizations and to students of industrial relations, is the sole purpose of this book.

MAXWELL COPELOF

New York City

June 1, 1948

MANAGEMENT-UNION ARBITRATION



1. APPROPRIATE QUESTIONS FOR ARBITRATION

Why should we permit anyone who may entertain ideas unsympathetic to our own, to dictate to us what to do? Why should we let a rank outsider tell us what to do? What does a college professor know about our business? Questions of this sort invariably arise when for the first time arbitration is suggested as a means for the proper settlement of labor disputes.

There is a single answer to all of these questions. Ask the people who have tried arbitration. If there ever was an instance where a company and a union had once agreed upon arbitration as the terminal point in their grievance procedure, and then abandoned it, this fact has been carefully concealed from students of American labor history.

What is management-union arbitration? If the term still needs any definition, an appropriate one might be: "An arrangement whereby two or more parties to a dispute involving any phase of labor relationships agree among themselves to present the issues involved in the dispute to an impartial and neutral person for a final and binding decision."

And what are the types of disputes that can properly be settled by an arbitrator? In brief summary they may be outlined as follows:

1. Disputes involving the interpretation or application of a current union contract.
2. Disputes developing between management and labor operating under a contract which failed to include specific provisions covering controversial issues that have arisen.
3. Disputes arising over an impasse in the negotiation of some or all provisions of a new contract.
4. Disputes between unions and their own members as to the latter's rights and obligations to their labor organization.
5. Disputes between two or more unions as to their jurisdiction over employees involved in particular situations.

The first three types of cases represent more than 99 per cent of all the labor matters that go to arbitration. In the settlement of the fourth type of dispute, the company may either be an interested party or an innocent bystander. The fifth type is so rare as to be of practically no concern to management and of little interest to most union members. Ordinarily, top officials of the unions affiliated with one or the other of the two great national labor organizations prefer to find means of settling any jurisdictional disputes "within their own family." Hence this book is confined primarily to a review and a discussion of the kinds of disputes that are being decided by the thousands each year in the day-to-day operations of all types of industry, commerce, and trade.

CONTRACT INTERPRETATION

If any union contract is to be worth more than the paper it is written on, some systematic and orderly basis must be provided for determining what the various provisions of the contract actually mean and for enforcing compliance with the contract on the part of all parties concerned.

The alternative can only be chaos and confusion. Suppose that the union readily agrees to a no-strike clause. Likewise management agrees to a no-lockout clause. Then suppose the union thinks the management has chiseled in applying the agreed-upon wage rates. Or management is of the opinion that the union is fostering a slowdown contrary to the express terms of the contract. Who shall decide what is to be done to whom? Indeed, where one or the other party has refused to accept arbitration, a contract may contain a clause declaring that there will be no strike or lockout so long as the contract is fully and faithfully observed. In the absence of an arbitrator to decide disputed questions of contract compliance, either party may have to resort to taking things into its own hands. If, as usually is the case, the major purpose of union contracts is to assure stability of management-labor relationships and freedom from stoppages of any kind for the life of the agreement, then arbitration is the only logical means for assuring that this purpose will be accomplished.

But it is not the purpose of this book to try to sell arbitration to anyone. Arbitration has already been bought by American industry and labor. By 1945, 75 per cent of all union agreements reviewed by a National Industrial Conference Board research agency con-

tained arbitration clauses.¹ For years prior thereto, the U. S. Conciliation Service (succeeded by the Federal Mediation and Conciliation Service) had urged the inclusion of an arbitration provision in every contract wherein a commissioner of conciliation took part during negotiations.

During World War II when the National War Labor Board was empowered to settle nearly all types of labor disputes, that agency invariably ordered the inclusion in new contracts of clauses providing for arbitration of disputes involving interpretation or alleged violation of the contract, whenever the parties themselves were unable to agree upon the terminal point in their grievance procedures.

Then in the Fall of 1945 the Management-Labor Conference took decisive and unanimous action on the subject. That conference, it will be recalled, was convened by President Truman with the view to establishing a national labor policy that would be subscribed to voluntarily by industry and by labor organizations. It failed to reach accord on most of the controversial issues then under consideration. The thirty-six representatives of both management and labor did, however, *unanimously* agree on a statement of principles for arbitrating contract disputes. It happened that this body of principles was drafted by the management representatives at the conference. Even so, every one of the union representatives endorsed the statement without qualification or reservation. Here is what was agreed upon at that conference:²

TERMINAL POINT OF GRIEVANCE PROCEDURE

The parties should provide by mutual agreement for the final determination of any unsettled grievances or disputes involving the interpretation or application of the agreement by an Impartial Chairman, Umpire, Arbitrator, or Board. In this connection the agreement should provide:

- a. A definite and mutually agreed upon method of selecting the Impartial Chairman, Umpire, Arbitrator, or Board;
- b. That the Impartial Chairman, Umpire, Arbitrator, or Board should have no power to add to, subtract from, change or modify any provision of the agreement but should be authorized only to interpret the existing provisions of the agreement and apply them to the specific facts of the grievance or dispute;
- c. That reference of a grievance or dispute to an Impartial Chairman, Umpire, Arbitrator, or Board should be reserved as the final step in the pro-

¹ The Conference Board, *Management Record*, April, 1945.

² *Management's Program for Minimizing Industrial Disputes*, Labor-Management Conference, November, 1945.

cedure and should not be resorted to unless the settlement procedures of the earlier steps have been exhausted;

- d. That the decision of the Impartial Chairman, Umpire, Arbitrator, or Board should be accepted by both parties as final and binding;
- e. That the cost of such Impartial Chairman, Umpire, Arbitrator, or Board should be shared equally by both parties.

Any question not involving the application or interpretation of the agreement as then existing but which may properly be raised pursuant to agreement provisions should be subject to negotiation, conciliation or such other means of settlement as the parties may provide.

Nothing herein is intended in any way to recommend compulsory arbitration, that is, arbitration not voluntarily agreed to by the parties³

Under the broad heading of contract interpretation must also be considered questions of alleged contract violation. To determine whether or not either side has breached the contract it is necessary to make certain what the contract was intended to mean. Perhaps the employer will contend that no contract clause governs and therefore if the dispute involved management prerogatives the company was free to do as it pleased. Conversely, if the dispute related to matters ordinarily considered to be exclusively within the control of the union, the union could do as it saw fit. A properly worded arbitration clause will take care of all such contingencies.

In a pamphlet published by the Division of Labor Standards of the United States Department of Labor in November, 1946, the following typical and illustrative clauses were suggested: ³

All issues relating to the agreement: All issues arising as to the interpretation or application of this agreement shall be arbitrated at the option of either party.

All issues relating to the agreement and any other unsettled disputes, but no modification of the agreement: In the event any differences or disputes arise between the parties as to the meaning, application or interpretation of any of the terms or conditions of this agreement that cannot be amicably settled, or should either party claim that the other has breached any of the terms or conditions of this agreement or should any grievance or dispute remain unsettled after exhausting the first three steps of the grievance procedure outlined in Article — hereof, then, the dispute or question involved shall be submitted for arbitration to an arbitrator to be mutually selected by the parties, as herein provided. . . .

It is distinctly understood and agreed that the arbitrator shall have no power to alter or modify the terms and conditions of this agreement.

Jurisdiction not limited to application of agreement, but no modification of the agreement: Any and all matters of dispute, difference, disagreement or con-

³ *Arbitration of Grievances*, Bulletin No. 82, U.S. Department of Labor, Division of Labor Standards, 1946.

trovery of any kind or character between the union and the association and/or member involved, involving or relating to wages, rates, hours, conditions of work, and the relations between the parties, arising during the term of this agreement or any renewal thereof, including but not limited to the interpretation, construction, or application of the terms of this agreement, shall be submitted to the impartial chairman for final and binding decision by him. It is understood and agreed, however, that the impartial chairman shall not have power to alter, modify or change this agreement or any of the terms or provisions thereof, and the union and the association and/or member involved agree to be bound by and abide by the decisions of the impartial chairman.

Even where the contract clause is as succinctly and clearly worded as those just quoted, questions still may arise as to whether or not a given dispute is arbitrable under the terms of the contract. Here too, the right of either party to take the dispute to arbitration is itself a proper subject for arbitration. Either side can insist on letting the arbitrator decide first the basic question as to the arbitrability and then if necessary the merits of the dispute.

Perhaps a specific example or two should be cited to illustrate this point. Assume that a contract set out in detail an agreed-upon scale of wages for various job classifications. Minimum and maximum rates were specified for each job grade. But no provision was inserted in the contract to determine how the rates of individual employees should be adjusted between the minimum and the maximum. Perhaps the previous agreement contained a clause providing for so-called automatic progression at three-month intervals in steps of x cents an hour until the maximum was reached. Or perhaps the earlier contract provided for increases within the range on the basis of merit only.

The absence of specific contract language might not have been an inadvertence at all. Conceivably, the union had objected to merit increases on the grounds that this left the matter wholly within the jurisdiction of management. Similarly, the company might have objected to automatic progression. Then both parties merely agreed to set out the minimum and the maximum rates for each classification, with the management thinking it was free to do as it saw fit, and the union being firmly of the belief that it could take up through the grievance procedure, and to arbitration if necessary, any dispute as to the adequacy of the rate paid to any individual workman.

Then the union feels the contract has been violated. The established range for a certain type of mechanic is, say, from \$1.25 to

\$1.50 an hour. Five out of six of the mechanics on the job are getting the maximum. Mr. X, who has been in the employ of the concern for five years, has a rate of only \$1.30. He insists, and the union agrees, that his work performance is just as good as that of his fellow employees, and he is entitled to a rate of \$1.50. The company disagrees. Its spokesmen are firm in holding that the contract gives them the right to decide what the specific rate for any employee shall be, so long as it is within the agreed-upon range. The union of course differs. If the arbitration clause provides for submitting to arbitration any unsettled dispute regarding the meaning or application of the contract, then it is proper for the union to insist upon the matter going to arbitration. The company is entirely within its rights in disputing the arbitrability of the issue. It cannot, however, refuse to let this jurisdictional question be decided. Thus the issues presented for determination by the arbitrator would usually be formulated as follows:

1. Does the current contract require that unsettled disputes regarding the wage rate of any employee be resolved by submission to arbitration?
2. If such a dispute is arbitrable, is the arbitrator authorized to fix the rate of any employee at any point between the minimum and maximum, and if not, what are the limits of his jurisdiction?
3. If the contract is found by the arbitrator to permit him to order the change of the rate of any workman within the limits set by the minimum and maximum of his job classification, what is the proper rate for mechanic X?

In proceedings of this type, the arbitrator ordinarily takes all relevant testimony and hears oral arguments or reviews written briefs on the positions of both sides as to the arbitrability of the issue. If the matter is so complex as to require extended study and reflection on his part, he may refuse to take testimony on the merits of the case, as distinct from the question of his jurisdiction, until after he has reached a decision on the first point. If, on the other hand, the evidence and arguments enable him to reach an immediate conclusion that the question is in fact arbitrable, he will proceed to have the parties present their testimony on the merits of the dispute. He may, however, merely decide to reserve his decision on the arbitrability of the point in dispute and proceed to take all testimony on the facts in order to conserve the time of both parties and avoid a second hearing.

Another hypothetical case of the same sort can be described more simply. A current contract provides that there shall be no strikes, slowdowns, or other interferences with production on the part of the union. It stops there. In other words, it binds the union to avoid stoppages but does not in so many words require union officers to take any affirmative action to prevent production slowdowns or outright stoppages. A strike occurs in a given department. All employees stay away from their jobs for a week. The company contends that there has been a flagrant violation of the contract for which the union is responsible. It seeks to collect damages from the union. In support of its position, the management points out that in the past whenever the union has convinced it, or if necessary the arbitrator, that an employee has been unjustly discharged, the arbitrator invariably has ruled that the man is entitled to reinstatement and imposes on the company back pay for the time he has lost. In this case, if the arbitrator decides the union was at fault in instigating or condoning the stoppage and in not taking adequate steps to bring it to an end, then, so the company argues, the arbitrator has the authority, as well as the duty, to levy a penalty against the union. Here the issues to be arbitrated might be formulated as follows:

1. Is it the union's obligation under the current contract to take affirmative steps to prevent any work stoppage?
2. If so, did the union fail to take the measures required by the contract in the case of the department in question?
3. If the answers to questions (1) and (2) are found to be in the affirmative, what penalty, if any, shall be imposed on the union?

MATTERS NOT COVERED BY CONTRACT

Sometimes it is a close question as to whether the contract can be interpreted to apply to a given situation or whether there is no contract clause that governs. When it appears that the parties have failed to include a provision that would determine how any particular situation should be dealt with, then the parties may wish to have this matter settled in arbitration proceedings.

It may develop that the arbitrator will rule that the question raised by the management and the union is not arbitrable because of the absence of a controlling contract clause. Usually in such circumstances he recommends that the parties endeavor to negotiate a suitable clause. Perhaps they fail. But the problem with which

both of them are confronted is too serious to let ride indefinitely. So they decide to get an impartial ruling on the basis of the merits of the case as presented by both sides.

There is no limit to the situations that develop after a first contract has been negotiated and put into effect, or even when a company and a union have been living together amicably over a long period of time. Assume for instance that a company's volume of business has been expanding year after year. Little or no thought has ever been given to what should be done in the event of an abrupt change in its outlook. Hence the current contract does not specify what personnel adjustments shall be made upon a downswing in the rate of production. Should hours of work be reduced? Or should there be wholesale layoffs of employees with low seniority? The contract is silent on both matters.

Obviously something decisive has to be done. But the contract provides for a standard 40-hour week for all employees. Can the company reduce the hours to 36 or 30 and retain all of its regular working force in its employ? Can the company lay off a sufficient number to make it possible to continue to operate on a 40-hour basis? Believe it or not, this is not a hypothetical situation. It has occurred any number of times when initial contracts were entered into in periods of rising business activity when nobody gave a thought to the "end of the rainbow." Regardless of whether or not the contract contains a no-lockout, no-stoppage clause, the parties don't want to resort to economic pressure as a means of settling their dispute. Then arbitration is in order. The question submitted for arbitration in such a situation usually vests in the arbitrator discretion to settle the case in any manner he considers most fair and appropriate.

On the other hand, the parties may decide between themselves upon terminal limits beyond which the arbitrator shall not go in rendering his decision. They might, for instance, agree to submit for determination by the arbitrator some such question as the following:

Since it appears to both parties that the volume of business will drop in the next few months by 20 per cent, should the work week be reduced from 40 to 32 hours, or should 20 per cent of the employees with lowest seniority be laid off?

Naturally, the parties will present to the arbitrator all the facts and circumstances bearing upon the question at issue, as well as

the most cogent arguments in support of their respective positions. The arbitrator will be free, however, to use his own judgment, taking into account not only the evidence presented to him but his knowledge of how similar situations have been most satisfactorily adjusted in other concerns facing comparable problems.

Again assume that through inadvertence or because the management and the union did not feel it was important enough to warrant inclusion in the contract at the time of negotiation, no contract clause was inserted covering the question of paid rest periods. Then, because the demand for the company's products was unusually brisk, all employees were urged to work at top speed throughout their entire shifts. Large numbers of them began to complain they were being taxed beyond their endurance. The management recognized the problem but felt that the proper solution was to let each employee take a breathing spell at a time when his machine could be watched by a fellow worker. The union was strongly of the opinion that definite 10- or 15-minute rest periods were the only solution. The parties failed to come to an agreement, even though both were fully aware of the desirability of making some adequate provision for preventing undue fatigue. This would be an obvious and natural question to be submitted for arbitration. In situations where workers are paid on a "piece work" basis, is the rest period to be included, by way of allowance for these periods in the piece rate, or is the payment for them to be made separately, and piece workers obligated to take the rest periods?

Or it might happen that after a contract was entered into the company found it desirable to establish an entirely new department. The jobs and working conditions in the new department were so different from those in all other departments of the concern that the methods used for setting wage rates in the existing departments could not be applied in fixing the rates for the new jobs. The contract might have included a provision to the effect that in the event of the creation of entirely new departments, management could set the rates but if these proved unsatisfactory after a reasonable trial period, the union could question the adequacy of the new rates and take the matter to arbitration. Most likely there would be no such contract clause. If then the management should insist on establishing rates that were unacceptable to the union, with or without a trial period, or the union should refuse to let any work be done in the new department until satisfactory rates were agreed upon, a

costly and quite unnecessary impasse might be reached. Here again the problem could be satisfactorily resolved by an interim agreement permitting the company to start operations at rates that it considered adequate, but also providing that after a trial period of one month, any rates considered improper by the union would be reviewed by an arbitrator, who would be empowered, as is customary in all arbitration proceedings, to render a final and binding decision.

These examples are indicative of a variety of problems that come before arbitrators day after day. Typical solutions are reviewed in some detail in Chapter X.

ARBITRATING TERMS OF NEW CONTRACTS

Every well-informed person connected with labor relations in either an industry or union capacity agrees that the best contracts are those negotiated directly between the parties concerned without assistance or intervention from any source. No experienced arbitrator is eager to step in and take over the writing of a new contract. There are, however, circumstances in which such intervention is necessary and inevitable. Cases of this sort arise most frequently in enterprises where the public interest is vitally affected. Public utilities afford conspicuous examples.

Assume that a union of electrical workers has agreed upon a uniform national policy to demand a 15 per cent general increase in all of its negotiations during a current year. Perhaps it had authorized its locals to settle for 10 per cent. Then it developed that the first contract coming up for renegotiation was one involving the employees of a small power company which was barely struggling along on an unprofitable basis. The lack of substantial earnings might have been due to delayed action on the part of a state public service commission in giving approval to a consumer rate increase. The union officials would be well aware that to insist on a 15 per cent or even a 10 per cent general increase would have the result of throwing the company into bankruptcy.

Union leaders are realistic. But they also have the major interests of their national or international organization to consider. Were the union officials confronted with the problem of negotiating a new contract with this particular utility company to agree readily with its management on a 7 or 8 per cent increase across the board, they would put their whole organization on the spot. They would

thereby be setting a bad precedent. Other companies in dissimilar circumstances would hold out for nothing more than the same amount of general increase. On the other hand, if the union officials agreed to have the wage dispute submitted to arbitration, they would no longer be on the spot. The ultimate result would be solely the responsibility of the arbitrator. Whatever his award might be, the amount of the wage increase could never be considered as having set a national pattern for all the industries with which the union had dealings.

Particularly in multi-plant corporations operating on a national basis, similar problems over general policy arise. While the operations of the corporation as a whole may be unprofitable, one single plant may be producing unusually high earnings. If its management should agree to accede to the union's demands for a 10 or 15 per cent increase, invariably the locals representing all other plants would find it difficult to convince their members that they too should not get the same amount of adjustment in their rates. The pressure of having to set precedents that might be considered applicable throughout all plants of the corporation would be taken off both the parties if there was agreement that the wage questions in the plant operating on the unusually profitable basis should be arbitrated.

Arbitration of new contract provisions is by no means confined to public utilities or to large corporations operating on a national scale. There are hundreds of communities in which a single plant dominates the business picture. Suspension of operations in such a plant would bring distress to the entire town or village. Here too the public interest—i.e., the affairs of the whole community—may be paramount. Neither the management nor the union may wish to assume the responsibility for breaking off negotiations and thus disrupting the affairs of everyone directly or indirectly dependent on the continuance of its operations. Both the union and the company may be standing on matters of principle which to each of them seem to be of tremendous consequence. Yet the larger interest is that of the people in the entire community. What then should they do? Is the union committed to insistence on a union shop or else no contract? What might happen if the management is firmly convinced that seniority as the basis for retention, transfer, or promotion of workers is the antithesis of business efficiency? Neither side can be sure that it is right. Rather than resort to economic

pressure to the probable ultimate detriment of all concerned, the prudent course of action would be to let the dispute be settled by arbitration.

These hypothetical situations could be duplicated many times over by the citing of actual situations where the terms of new contracts have been submitted to arbitration and the result has been general satisfaction all around. Specific cases dealing with a variety of new contract provisions that have been settled through arbitration are set forth in Chapter XI.

CONTROVERSIES INVOLVING UNION-MEMBERSHIP RELATIONSHIPS

Even though they may not be directly involved, employers cannot help having an interest in and concern over the settlement of disputes arising over the rights and obligations of union members who are in their employ. Perhaps they may not be direct parties to such disputes, in the sense that their current contracts vest in the union full responsibility to determine whether or not any given employee or group of employees remains in good standing. But they are still directly affected if the result of the union's suspension of their employees or expulsion from its membership is to necessitate the discharge of the employees under a maintenance of membership or union shop contract. Hence it is in the interest of all concerned to make sure that there is adequate review by a disinterested party of disputed questions relating to the good standing of employees in the labor organization which they have elected or been obliged to join.

Then, too, the problem of seniority of employees who were promoted out of the bargaining unit at their own request or by the company's, and who were subsequently returned to the bargaining unit, is often a difficult one to resolve. Three distinct points of view, or interests, come to the fore, and arbitration of the issue appears to be the only answer.

Some of the cases summarized in Chapter V involve questions of union-employee relationships that are beyond the control of management but still illustrate how arbitration proceedings can assure a fair break for the union, for management, and for individual employees.

JURISDICTIONAL DISPUTES

Mention has been made of the rarity of jurisdictional disputes that go to arbitration, particularly where such disputes involve

inter-union controversies between CIO or AFL national unions. Such a dispute did arise, however, in the case of a button manufacturing company and the locals of two separate unions. Because of the uncommonness of arbitration cases of this kind, an actual dispute which was decided through arbitration proceedings is here summarized.

In this particular case, the company was also a party to the dispute, since the claim was made by one of the unions that the company had acted collusively in signing an agreement with the other union, upon expiration of the contract formerly held by the claimant union.

Position of union A The dispute between union A, a local of the CIO, and union B, an AFL local, was submitted to arbitration at a time when the members of union A were engaging in picketing the premises of the employer. Its reasons for doing this were that union A believed: (1) union B did not represent a majority of the employees of the company; (2) the company had acted collusively in signing an agreement with union B because it happened to favor the latter union; and (3) the salesmen of the firm should not have been considered members of the bargaining unit.

Position of union B Through its spokesman, union B asserted that (1) union A had not proved that it had a majority in the shop at the time union B entered into the contract with the company; (2) union A could not prove that union B was dominated by or was in collusion with the company; and (3) the salesmen of the company definitely should be included as members of the appropriate bargaining unit.

Position of the company The issue which the company sought to prove to the satisfaction of the arbitrator was this: The company did bargain in good faith with union A, and was justified in its action in not signing the contract which it negotiated with that local.

The company spokesman asserted that the company had initially bargained in good faith with union A, but when that union was called upon to prove it represented a majority, and produced cards to indicate that it did, the company was aware that these cards did not represent a *free* majority. The company spokesman testified that it based this contention on the fact that it had received complaints from several employees who stated they had been "forced into joining this union."

The company also contended that the salesmen in question had always been considered as part of the regular force, since they often performed duties as stock clerks or shipping clerks.

And finally, the company considered itself justified in entering into a contract with union B because its trade was very definitely tied in with firms who were under contract with other locals of the same AFL union.

Arbitrator's decision The arbitrator concluded that the questions he would have to answer in connection with this case could be summed up, and should be answered, as follows:

1. Did the company connive with union B in reaching an agreement? Here the arbitrator finds that the company leaned toward union B, but no proof was submitted that would warrant a finding of connivance or collusion.

2. Do the company salesmen come under the appropriate unit for bargaining? The arbitrator finds that in this instance they do. He considers it is to the best interests of constructive labor organizations to include salesmen who continually perform some stock clerk and shipping duties, so that they be subject to union rules and regulations that are made for the common welfare of the entire shop, in addition to the job security requirements of these workers as well as the others.

3. Was the company justified in doubting that union A had a free majority on the day of its final negotiation with the company? From all that was presented, it does appear that the company was justified in assuming that while the organizational activities of this union were quite aggressive, the union did not prove that it did represent a free majority of the workers.

4. Did union B actually have a free majority of all the workers in the plant at the time it warranted to the company that it did have such a majority? The arbitrator finds that this was not proven conclusively by the evidence presented.

5. The arbitrator rules that an election be held under the supervision of the National Labor Relations Board of all but the supervisory employees of the company who are eligible to vote for the purpose of determining whether they desire to be represented by union A of the CIO or union B of the AFL, this election to precede the signing or renewing of any contract by the company with the union.

LEGAL STATUS OF LABOR ARBITRATION

In settling financial or commercial disputes, arbitration is commonly used as a means of avoiding resort to litigation. The settlement of labor disputes through arbitration is, in contrast, a means for disposing of this type of controversy without resort to methods such as strikes or lockouts that under some circumstances are actually sanctioned, if not encouraged, by the law.

When the parties to a labor dispute sign a submission agreeing

that the decision of the arbitrator shall be final and binding, they cannot renege. If either party attempts to do so, the arbitrator's decision can ordinarily be enforced by the courts. Some state laws specifically detail the methods for enforcing, reviewing, or upsetting arbitrators' awards. Then certain well-defined legal principles relating to all types of arbitration have been established under the so-called common law. The most important of these principles is that an arbitrator's decision can be set aside "only for fraud, misconduct, gross mistake or a substantial breach of common-law rule."⁴

Of course when there is a state law applicable to arbitration of labor disputes, the provisions of that law rather than common-law principles control. Thus, as explained by Theodore W. Kheel, attorney-at-law and former Executive Director of the National War Labor Board, the New York law spells out the circumstances under which an arbitrator's decisions can be vacated and rendered unenforceable. These circumstances Mr. Kheel has summarized as follows:

1. Where the award was procured by corruption, fraud, or other undue means.
2. Where there was evident partiality or corruption in the arbitrators or either of them.
3. Where the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
4. Where the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted was not made.
5. If there was no valid contract or submission to arbitrate.

If the courts vacate an award, they may direct a rehearing either before the same arbitrator or before another arbitrator.

The courts are required to modify an arbitration award on application of any party to the controversy under any of the following circumstances:

1. Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property referred to in the award.
2. Where the arbitrators have awarded upon a matter not submitted to them, not affecting the merits of the decision upon the matters submitted.
3. Where the award is imperfect in a matter of form not affecting the merits of the controversy, and if it had been a referee's report, the defect could have been amended or disregarded by the court.

⁴ *Labor Arbitration*, U.S. Labor Department, 1943.

The order may modify and correct the award so as to effect the intent thereof and promote justice between the parties.⁵

The instances where arbitration is followed by court proceedings to enforce or set aside an award represent almost an infinitesimal proportion of all arbitration cases heard each year. When management and labor decide to arbitrate an issue, they have every reason to assume that the arbitrator's decision will stick. And his decision invariably sticks if he himself knows the functions of an arbitrator and carries out his role with propriety and impartiality.

⁵ Theodore W. Khcel, *How to Arbitrate a Labor Dispute*, New York, Copyright 1946 by Prentice-Hall.

2. HOW TO CHOOSE AN ARBITRATOR

There is no closed shop among practitioners of labor arbitration. There are no formal standards for admission to the profession and no organization of arbitrators which has any power like that wielded by the various bar associations and medical societies to select persons to be admitted to the field or to keep out undesirable practitioners. To be sure, a professional society of arbitrators was recently organized. It is a voluntary association composed primarily of persons who are now devoting all or most of their careers to arbitration. This association is of the same nature as groups of personnel executives, advertising men, or certified public accountants. That is to say, it was organized to promote the mutual interest, and the exchange of ideas among its members, rather than with the view to attempting to control or select the types of individuals who might serve as arbitrators.

A good arbitrator becomes good through accumulation of experience and diversified knowledge of the problems of management and labor. But mere length of experience in the field is not by any means the sole or the best indicator of the competence of an arbitrator. Integrity, an analytical mind, courage to make decisions, and ability to make clear the reasons for conclusions, as well as knowledge, experience, and diplomacy, are characteristics of the utmost importance.

Usually when the parties to a dispute decide to arbitrate, they will try to agree as to the choice of an arbitrator. Should they fail to agree, there are several ways in which to proceed further. Federal and state mediation services, the American Arbitration Association, or other agencies may be called upon either to recommend or actually designate the arbitrator. When the parties select their own arbitrator, there is an advantage to all concerned. No one has bought a "pig in a poke." Each side has unquestionably checked into the qualifications of the individual agreed upon. Therefore

neither side can have any basis for feeling, if the decision goes against it, that the other has conceivably pulled any strings or used any secret pressure methods to influence the appointment of the arbitrator by the governmental or private agency. Not that any such agency would be subject to pressure of this sort. It is simply that the mere suspicion on the part of members of labor unions or representatives of management that the other side can influence the choice of an arbitrator by an outside body is likely to breed distrust and be anything but conducive to the maintenance of good management-labor relations.

SELECTION BY PARTIES THEMSELVES

Many who represent either management or labor organizations in arbitration cases hold the view that the choice of an arbitrator should depend largely upon the nature of the issue in dispute. They say one would not engage a divorce lawyer to handle litigation over patents, or call in a landscape architect to design a factory building. Similarly, if the case at hand involves an intricate problem of the application of incentive pay, a specialist in industrial engineering should be designated as the arbitrator. Conversely, if the question is primarily one of interpreting a legalistic contract clause, a lawyer should be chosen as arbitrator.

There is much merit in their contentions. No one wants a novice completely unfamiliar with the realities of industrial life to settle any of his affairs for him. But it does not necessarily follow that a specialist in a given field makes the best arbitrator. Federal judges, for instance, have to review and pass on an infinite variety of cases. The litigants cannot decide for themselves that they want Judge X to decide their case because he had once been a specialist in the field of fair-trade practices, or Judge Y to preside over their case because he is or was an authority on patent law. Judges are selected or elected because of their broad-gauge ability to understand all sorts of personnel, commercial, or legal problems. The same should hold true in the selection of arbitrators. And yet there is much to be said in favor of contentions of those who insist upon the desirability of looking into an arbitrator's qualifications to handle a particular type of case, when the evidence to be presented will bring up technical questions.

Not to belabor the point unduly, a distinguished clergyman might be the fairest of arbitrators. If, however, he had never heard of job

evaluation or had had no occasion to visit an industrial plant or to learn from either management or labor what factors they consider important in determining proper rates for semiskilled or skilled jobs, the parties might do better than to select the clergyman to arbitrate this particular type of case. Then there are lawyers who may be successful but still are noted for their legalistic approach. By finding some obscure precedent or resorting to some trick interpretation of a statute, they may win cases for their clients, but in so doing are hardly seeing to it that justice or right prevails. To win cases is what they are engaged to do. That is their prerogative. When, however, the issue to be arbitrated involves down-to-earth questions of common sense and good relationships, the parties usually could do better than to select as arbitrator a person with a reputation for such tendencies.

The relative merits of specialist versus general practitioner, to use medical parlance, may hinge on whether the arbitrator is to be chosen for one single assignment or to act as permanent umpire to adjudicate all unsettled disputes arising during the life of the contract. The pros and cons of permanent versus one-shot arbitrators are considered later in this chapter. For present purposes it will be assumed that the parties are concerned solely with selecting the best possible arbitrator to rule on one specific case.

Choosing an arbitrator involves the same techniques that are generally used in picking executives, attorneys, or consultants for major assignments in business or in labor organizations (excluding of course the types of positions that are filled by election). It is proper to look up the past record of potential arbitrators. Rarely if ever is an experienced and capable arbitrator a job candidate. Therefore the parties do not go to him and ask him to supply references. There are many means, however, to obtain such references.

Several commercial reporting services in the field of management-labor relations regularly compile and publish significant arbitration decisions. Among these, by way of example, are the Bureau of National Affairs and Prentice-Hall, Inc. A review of the printed decisions of an arbitrator will give any interested party more than a cursory impression of how he operates. But remember in most cases the arbitrator is not free to decide the issues on their merits. He is usually bound by the terms of the submission to him only to interpret the meaning of the contract. What may appear to union

leaders or to personnel men as a sour decision may simply be the result of the inclusion in the contract of an unsound or unworkable clause.

It is also proper to check up with the companies or unions involved, in cases that have been published by reporting services. Just as fair-minded personnel executives would give a frank appraisal of former employees who are seeking new connections, they can be expected to give useful information regarding arbitrators with whom they have had dealings. The same goes for union officials.

In case of doubt, there can be no harm if either or both parties to the dispute get first-hand information from the arbitrator himself through a personal interview. There is nothing unethical or improper about this. A successful obstetrician is not hurt or offended if prospective parents seek him out for a frank discussion of his methods (or even personality) before entrusting the mother-to-be to his care. No reputable lawyer thinks of charging a fee or getting upset if a prospective client comes to him and openly indicates the desire to discuss whether or not to retain him to handle some pending litigation. Reputable arbitrators invariably feel the same way.

It is true that some authorities on arbitration view with suspicion any too enthusiastic recommendations regarding individual arbitrators made by either management or labor. They may say, "Watch out for the arbitrator whose name invariably appears on any list proposed by a union or a corporation." Certainly there is no harm in inquiring into such matters. Yet it does not necessarily follow, because an arbitrator is respected and admired by a group of companies or a group of labor unions, that he has become a partisan for one side or the other. When the same companies and unions pick the same arbitrator over and over again, it must be because all concerned have faith in his ability, integrity, and impartiality.

It is axiomatic that in all fields of endeavor the known is preferred to the unknown. Why then should anyone ever take a chance on an inexperienced arbitrator? There always has to be a beginning sometime, somewhere. Young doctors and young lawyers would never get a start if everyone insisted on choosing only experienced practitioners. But a patient who might call on a fledgling doctor to treat a sore finger would be much less inclined to have him do a major abdominal operation. The parallel is plain. For

simple issues involving settlement of disputes of facts rather than intricate contract clauses of major financial concern, or matters of essential principle, there is little risk involved in picking a newcomer to the field.

Where do arbitrators come from? How do they get that way? Some are lawyers who may have had either corporations or labor organizations as their clients. They may have shown such a flair for settling labor disputes through negotiation that both sides are willing to rely on their judgment in adjudicating matters that cannot be settled by mutual consent. Some may be college professors who have specialized in economics or labor relations. Some may be former labor union officials who have shown such statesmanship in their dealings with management as to inspire the confidence of everyone. Others may have been businessmen who by their dealings with unions have demonstrated a sympathetic knowledge and understanding of all phases of management-labor relationships. Still others may belong to that vague category of public-spirited citizens who try to "do their bit" in bringing about better relationships between employers and employees. Whatever their past backgrounds or present connections, there is no valid reason why the parties considering such persons as arbitrators should not make careful checks of their records before agreeing to their appointment.

Getting a mutual agreement Once both parties have decided upon their choice of an arbitrator, there remains the problem of getting both sides to agree on any one individual. Speaking semi-facetiously, Ralph T. Seward, who has served as impartial umpire in several of the most important industries in the country, had this to say:

Now the ordinary process of agreeing on an arbitrator goes something like this: Each side submits a list of names. But since each always crosses off every name that the other side suggests, if the parties are wise they keep the real names they want under their hats. Then each shops around for some third party to suggest the names they really want, but the other side catches on to this dodge and crosses off these names as well. Then they look around for a man whom neither side knows but who has an established reputation as an arbitrator. Each side checks on his decisions. If most of them are for management, the union crosses off his name. If most of them are for the union, management turns him down. Then they look around for a man with general experience in their industry. But if he has ever worked in a personnel job, the union rejects him as company-minded, and if he has ever worked in a plant or joined a union, management concludes that he is pro-labor and refuses to agree to his

appointment. The result too often is that the only man the parties are finally able to agree on is someone whom neither of them knows anything about and who has had nothing in his experience that could possibly qualify him for the job.

That is an extreme statement, of course. But there is enough truth in it to point up the need for greater maturity on the part of both management and labor in this matter of choosing arbitrators.¹

Actually either party may be fooled if it suggests an arbitrator whom it does not want, thinking that the other side is sure to reject its nominee. If the relationships between both sides have any degree of friendliness and mutual respect, the only proper way to proceed is for each party to nominate the candidate that is most acceptable to it. There may be much jockeying around in the process. Some time may be lost. But if both parties earnestly strive to suggest the best qualified arbitrators, ultimately they will reach an agreement. And, as previously indicated, an arbitrator agreed on by both sides is infinitely better in most cases than an arbitrator reluctantly accepted when the choice has been foisted upon the parties by some outside agency.

DESIGNATION BY THIRD PARTY

Numerous contracts provide that in the event the parties are unable to agree on the selection of an arbitrator, the Federal Mediation and Conciliation Service or the American Arbitration Association, shall be called on to designate the arbitrator. Even in the absence of such a contract clause, both of these agencies are frequently used to recommend or appoint the arbitrator when an impasse is reached between the parties.

Depending upon the nature of the dispute, the Federal Mediation and Conciliation Service will either directly appoint an arbitrator on request by both sides, or suggest names of qualified arbitrators from which the disputants can try to agree on their own selection. Failing an agreement, the Service will proceed to name the arbitrator anyway, if either the contract requires it or the parties authorize it to do so.

The usual practice of the Mediation and Conciliation Service is to submit a list of names to the parties when the dispute involves wages or other important matters. The management and the union check off from the list the names that are unacceptable to them.

¹ Ralph T. Seward, *The Process of Arbitration*, Personnel Series No. 110, American Management Association, 1947.

If two or more names are acceptable to both sides, then the Service makes its designation. If none is acceptable, it proceeds to appoint the arbitrator. In less consequential matters the Service proceeds forthwith to designate the arbitrator. These facilities of the Service, which are of course provided without charge, can be invoked merely by writing, telegraphing, or telephoning to the Federal Mediation and Conciliation Service, Department of Labor Building, Washington, D. C.

The American Arbitration Association, a privately financed and administered body, has existed for many years to promote and facilitate the use of arbitration procedures as a means of settling all types of commercial and labor disputes. Prominent businessmen and labor leaders serve on its board of directors. When requested to nominate or appoint an arbitrator, that association submits to both parties a list of five or ten names. If none of the persons on the list is acceptable to both sides, a second list is submitted. Again, if none is acceptable, the Association names the arbitrator itself, but chooses someone whose name did not appear on either of the lists previously submitted to the parties. The national headquarters of the American Arbitration Association is at Rockefeller Center, New York City. Regional offices of the Association are located in most important cities. There is no charge for the services of the Association in selecting arbitrators. When using its facilities, however, the parties must agree to adhere to the relatively simple rules of the Association governing procedures to be followed. The representatives of both sides should have a working knowledge of these rules, for they have proved to be effective in preventing misunderstandings and delays from arising during the proceeding and after the award has been made.

Occasionally the choice of an arbitrator may be left to state or local officials such as the governor, the mayor, or a state judge, and sometimes federal judges are jointly requested to name the arbitrator. When the parties wish to use this method for obtaining an arbitrator it is always desirable to give sufficient information about the issues involved in the dispute to enable the official to whom the request is made to make an intelligent selection.

PERMANENT VERSUS TEMPORARY ARBITRATORS

In negotiating the contract provisions relating to arbitration, the union and the management invariably have to decide not only how

the arbitrator shall be chosen but also whether they wish to have a permanent arbitrator to decide all unsettled disputes, or to select a temporary or special arbitrator for each separate dispute as it might arise. If, for example, the contract is between a large multi-plant company and an international union with many locals, it is to be presumed that a considerable number of disputes may arise during the term of the contract. Thus serious consideration should be given to the appointment of a permanent arbitrator (frequently called umpire under such circumstances). On the other hand, in small plants or concerns where the parties know each other intimately and the contract is skillfully and clearly worded, the probabilities of more than a few disputes having to go to arbitration are remote. Hence there may be little or no need for a permanent umpire.

The pros and cons of this question have been reviewed and summarized by two seasoned arbitrators in a pamphlet published by the U. S. Department of Labor. Their views, which are theirs alone and not necessarily subscribed to by the Labor Department, are summarized below.

Single Permanent Arbitrator (Impartial Chairman or Umpire)

This type of arbitrator is selected for a specific period of time.

Advantages: a. The arbitrator gradually becomes familiar with, and eventually expert in, the contract clauses, wage payment plans, industrial techniques, and processes of the industry.

b. Decisions will be consistent one with another. Because of this, precedents will be established, the parties will know what to expect from the arbitrator, and similar cases in the future will be resolved by agreement at an early stage of the grievance procedure. It is pointless to "whip a dead horse" by pushing a second time the same type of grievance which has been lost once.

c. No time is lost in choosing an arbitrator after the initial selection. Less time is usually consumed in making arrangements for hearings. The grievance procedure is shortened to the advantage of both parties, particularly in discharge or seniority cases where an employee's job status is in doubt and back pay may be involved.

d. The *permanent* arbitrator becomes acquainted with the personalities on both sides of the table.

e. As a result of (a) and (d) above, time required for the presentation of evidence at hearings is shortened substantially. The parties do not have to educate the arbitrator each time, and there is less tendency for one or both parties to stray from the subject at hand or belabor a point. To illustrate, one of the writers of this pamphlet averages approximately 8 grievance cases per day of hearings where he is the *permanent* umpire or impartial chairman, in contrast

to an average of approximately two cases per day when he is retained on a temporary basis and is not familiar with the parties or the industry.

f. The *permanent* arbitrator requires less time for investigation and preparation of opinions due to familiarity with the industry and with the parties.

g. The *permanent* arbitrator seldom requires a verbatim transcript.

h. As a result of (e), (f), and (g) above, the direct cost of each arbitration (fees and expenses of the arbitrator and expense of a transcript, if taken) and the indirect costs (time spent by the representatives of the parties and the union or company cost for time of witnesses, etc.) are substantially less than for a series of *temporary* arbitrators.

i. There is less tendency for either party to throw in a few admittedly weak cases with the thought that a green arbitrator will split the difference and by this means give favorable decisions on the more important cases, or even give favorable decisions on some of the weak cases.

j. The arbitrator must live with the parties and with his own decisions. He cannot blithely toss off a decision, knowing that he may never see the parties again. A really bad decision may come back to haunt him. If any emphasis on responsibility is needed, tenure provides it.

k. When a *permanent* arbitrator can secure the full confidence of both parties, they may sometimes request him to step out of his semijudicial role and assist them in the mediation of potential disputes.

Disadvantages: a. Because of tenure, it becomes more important to select an individual in whom both parties will have confidence. The parties may become saddled with a "lemon" with no convenient way of removing him.

b. While total arbitration costs should be less, when a *permanent* impartial chairman or umpire is selected, the parties usually obligate themselves to at least a minimum predetermined cost for his services.

c. There is a danger that the ready availability of a *permanent* arbitrator may result in failure to exhaust all possibilities of settlement at earlier stages of the grievance procedure.

d. The fact that the parties usually must pay a *permanent* arbitrator a minimum fee may tempt them not to exhaust all other means of settlement but instead to make the arbitrator earn his money by deciding at least a few cases.

e. It is sometimes difficult to find any one individual who is experienced in all types of potential grievances. For example, one individual may be particularly qualified to handle seniority cases but may be inexperienced in incentive pay cases.

Temporary Arbitrator or Umpire

Some of the advantages and disadvantages of this type of arbitration are obvious from the preceding discussion. Here are some additional considerations:

Advantages: a. This system permits easy change of the third party if the arbitrator proves to be incompetent.

b. It facilitates selection of an arbitrator especially qualified for the grievance dispute in question. For example, the parties can judge the experience and qualifications of prospective arbitrators in handling disputes over incentive pay.

c. It is well adapted to situations where arbitration is an entirely new idea to

both parties and they wish to experiment, or where experience has shown that practically all disputes can be resolved by the parties.

d. A *temporary* system does not eliminate the possibility of continuous re-selection of the same individual thus securing many of the benefits of a *permanent* system without some of its liabilities.

Disadvantages: a. The time and effort required to select an arbitrator for each case or group of cases delays conclusion of the grievance or grievances, sometimes to the detriment of plant morale.

b. Frequently, out of desperation, a person is selected who has little or no experience or real qualification for the case. Such a selection may be made because he is the only person available who has not issued a decision somewhere, sometime, which the union or the company does not like. Good arbitrators are few and far between who have not incurred somebody's wrath at some time in their career or who have not issued decisions elsewhere on similar issues which may influence one party to "blackball" them for a specific case in spite of excellent qualifications in every other respect.

c. When *temporary* arbitrators are used, there is little precedent established. Either party may want to take a chance on the same type of case again.

d. There is no necessary consistency in the decisions. If a contract interpretation has any precedent value, it persists only until the next time it is tested before a different arbitrator. Resultant conflicting decisions from two or more arbitrators may create more disputes than have been resolved.

e. There is a tendency for the party losing the majority of cases before a *temporary* arbitrator to seek a change of luck and to insist on a different arbitrator for the next cases, regardless of the fairness of the decisions.

f. Each new arbitrator must be educated in local conditions, requiring much hearing time and time for investigation and writing of decisions, thus adding to the cost.

g. There is some tendency for *temporary* arbitrators to be unduly legalistic in their approach.²

Messrs. Simkin and Kennedy, the authors of the pamphlet from which the above quotation is taken, recommend the use of permanent arbitrators for almost all situations, and give added reasons for their views. Hence it might appear to some that their discussion of the advantages and disadvantages is unduly weighted by their own predilections and their own experiences. This is, however, an improper assumption. They have succinctly set forth nearly all of the factors that must be weighed by both parties in deciding the question in the light of their own special conditions and circumstances. As for this author he has served innumerable times in both capacities. He has no "position" to take in the matter. No matter of principle is involved. The decision of the parties may well center

² William E. Simkin and Van Dusen Kennedy, *Arbitration of Grievances*, Bulletin No. 82, Division of Labor Standards, U.S. Department of Labor, 1946.

about such paramount questions as their estimates of the probable case load, the types of disputes that are most likely to arise, the availability of temporary arbitrators, and also their own estimates as to the probable cost of the alternative choices.

COSTS OF ARBITRATION

It may be possible for the parties to a labor dispute to obtain an arbitrator who will serve without charge. Lawyers have an old saying to the effect that free legal advice is usually worth exactly what it costs. If the parties really desire to obtain either the temporary or the permanent services of a really experienced arbitrator, they must expect to pay for these services. On the other hand, as previously indicated, there are circumstances in which it may well happen that a well-qualified and public-spirited citizen who obtains his livelihood from another type of business or profession, will be willing to serve as an arbitrator gratis in an individual case or two.

When the parties to a labor dispute desire to have a professional arbitrator decide their case for them, the usual procedure is to have his fees and out-of-pocket expenses shared equally by both parties. The customary fees are comparable in amount to fees charged on a per diem basis by other types of professional men and consultants. The time spent on a case is the usual measure of the size of the fee. In fact, a per diem fee basis is the logical and equitable basis for determination of the arbitrator's charges. In the actual hearing and presentation of the case, the amount of time consumed is beyond the control of the arbitrator. It is up to the union and the company to decide how many witnesses they will use and how much time will be consumed in oral argument. Of course the time spent by the arbitrator in reviewing the evidence, weighing the pros and cons, reaching a decision, and then writing his opinion and award will depend upon not only the amount of experience but the work habits of the arbitrator himself. As Messrs. Simkin and Kennedy point out in the pamphlet prepared by them for publication by the U. S. Labor Department which has been referred to previously, "an arbitrator who appears to charge a high daily fee may prove less expensive for a series of cases than an individual who charges a more modest daily fee, simply because he hears and decides cases with greater speed."

A sort of unofficial standard for arbitration fees has been established over a period of years by the Federal Mediation and Concilia-

tion Service and its predecessor, the U. S. Conciliation Service, which was formerly a branch of the Labor Department. The arbitrators recommended or appointed by the Service are expected to charge fees ranging from about \$50 a day to a maximum of \$100 a day, plus traveling expenses. When the American Arbitration Service designates the arbitrator, it charges a so-called administrative fee of \$25 a day for each party, or a total of \$50 a day plus the arbitrator's expenses, if any.

When a permanent arbitrator has been agreed upon by both parties, the amount of his fees is invariably the subject of negotiation. Usually an annual retainer is involved. This in a sense represents a minimum charge to be incurred by both parties, regardless of the number of cases he will be called upon to hear. If, for instance, it is anticipated that ten cases might arise during the year with the average time per case a total of one day for hearing it and one day for deciding it and writing the award, the annual retainer fee might be some such sum as \$1500, each side to pay one half of the fee. If more cases should arise or more time is required to hear and decide the cases, additional charges over and above the retainer might be assessed on a per diem basis of \$50 to \$100, this amount again being divided equally between the parties.

The foregoing cost figures are only illustrative. Fees charged in actual practice vary as do those charged by practitioners or specialists in other learned professions. The professional arbitrator with ten or twenty years of full-time service in his field can command a higher fee than a newcomer.

USE OF TRIPARTITE BOARDS

Tripartite boards of arbitration are not infrequently created, either on a permanent or a temporary basis. Such boards ordinarily consist of a representative designated by management, a representative designated by the union, and an impartial chairman selected by the other two arbitrators. The management and union members of the board usually are officials of the organizations that appoint them. Sometimes, however, both sides may designate "outsiders" who may be presumed to have a sympathetic interest toward the side which designated them but still may be expected to act in an impartial capacity.

There is more justification for use of a board of arbitration in cases involving the negotiation of entire contracts, or especially

intricate or important contract clauses, than there is in deciding cases involving contract interpretation. When for instance an entire new wage structure is to be set up, the neutral arbitrator may get valuable advice and technical assistance from the representatives of the union and the management, if they themselves are thoroughly familiar with all the matters in dispute. If the case is one where a compromise rather than a judicial decision seems called for, a tripartite board also may have some advantage, for the representatives of the respective parties invariably know the real position of their constituents and can assist the impartial chairman in working out a compromise acceptable to all concerned.

For most types of disputes, the advantages of a single arbitrator seem greatly to outweigh the advantages of a tripartite board. Just in the matter of expediting the hearing and decision on the case, it is obvious that selecting three arbitrators, arranging meeting dates, etc., are time-consuming processes. There may be additional delays in getting the three arbitrators together for the review and the discussion of the issues after the arbitration hearing. Still further delays may occur in trying to get a unanimous decision, or, failing that, in waiting for the dissenting arbitrator to write a minority opinion.

But there are more important considerations. The essence of arbitration is impartiality. Rare indeed is the arbitrator appointed by a company or a labor organization as a member of a tripartite board who will really act as judge rather than advocate. If he earnestly tries to be impartial, the people he represents may feel he has "let them down." If he persists in rearguing the case of his side at a closed session of the board after the arbitration hearing is over, the whole proceeding tends to become long-drawn-out and repetitious. In the long run, the impartial chairman has to make the final decision. There is always a possibility that he will be unable to get either of the other two arbitrators to agree with what he regards as the only proper decision. Then some kind of compromise has to be effected. The result may be an award that falls short of fairness and justice to either side.

3. PREPARATION AND PRESENTATION OF CASES

Thousands of disputes that might seem to be headed for arbitration never reach that stage. Why? Just because one side or the other, in reviewing the issues and preparing testimony or exhibits, finds some previously undisclosed fact, or detects some flaw in its position that would invariably result in loss of the decision. There is no disgrace in an honorable retreat. If the position of the company or the union is known to be untenable in advance of the arbitration hearing, it is far better to withdraw the case entirely. Most arbitrators are much too busy to have to waste time in listening to lost causes.

What has just been said points to the imperative necessity for thorough preparation on the part of both sides for all types of arbitration cases. Eloquent oratory, or brilliantly reasoned but specious arguments, are no substitute for facts. The arbitrator is quick to see through any stratagems that are designed to obscure the real issue or hide the absence of a factual basis to support the position of each contestant.

DECIDING UPON THE EXACT QUESTION OR QUESTIONS TO BE ARBITRATED

Unless the relationship between both parties and the arbitrator is of the most casual and informal nature, and there is a desire to let the arbitrator decide any and all questions that may be raised by either party at an arbitration hearing, it is imperative that each issue in dispute be reduced to writing and the exact question to be decided by the arbitrator be clearly defined. If this procedure is not followed, much time will be consumed and there will be much tilting of windmills at the arbitration hearing before the parties really get down to business.

The bulk of all arbitration cases arises from unsettled grievances

involving contract interpretation. The grievance itself may be somewhat vague. The management may not really understand what the union is shooting for. The union representatives often bring up apparent injustices or contract violations not for the purpose of trying to exact a penalty from the management, but rather to get a clarification of the contract and an agreement upon the course of action to be followed in the future, in applying a given contract clause. Hence the importance of finding out and putting in writing the real issues in dispute that both parties wish the arbitrator to decide. When the questions to be arbitrated are put in written form and agreed to by the company and the union, these questions form what is called a "submission for arbitration." Appropriate language for such submissions can best be suggested by examining typical submissions in a wide variety of cases. In Chapter IV and other chapters of this book the submissions of actual cases are quoted in considerable numbers.

Sometimes, despite their willingness to have unsettled disputes submitted to arbitration, the parties cannot agree among themselves as to the precise phrasing of the submission. Then it becomes necessary to work out the language of the submission at the arbitration hearing itself. When this happens, the arbitrator usually devotes the opening phase of the hearing to an informal discussion and presentation of the issues by the management and labor spokesmen. With the approval of both sides, the arbitrator himself may work out the questions and frame the submission in suitable language. However, unless the contract vests in the arbitrator full authority to decide any question raised by either party, there must be actual agreement by the management and the union on the phrasing of the submission before the arbitrator can proceed to hear the case and make his award.

It is still more important to have carefully and precisely worded submissions in disputes involving the terms of new agreements. Suppose there is a deadlock on a question of union security. Management offers nothing. The union originally asked for a union shop but it has indicated its willingness to settle for maintenance of membership and the checkoff. What is the arbitrator to decide? If the submission should be framed to read "What type of union security clause shall be embodied in the contract," the arbitrator would be entirely free to go beyond the final offer of the union and award a union shop clause.

Disputes over wage clauses in new contracts could give rise to the same sort of arbitration awards. Assume an impasse has arisen over the demand of a union for 15 cents an hour and the management offer of 5 cents an hour. Both parties are genuinely sincere and firm about their final offers in submitting the question to arbitration. Should the arbitrator be empowered to allow no increase at all? Or an increase of 30 cents an hour? Obviously not. No seasoned arbitrator would do either of these things. Still it is important, in framing the terms of the submission, to set terminal limits on the arbitrator's authority. These limits usually represent, on the low side, the company's latest wage proposal, and on the high side, the amount of increase that the union is willing to accept.

There may, however, be exceptions from the conditions just cited that would justify giving an arbitrator an entirely free hand in making a wage award. Possibly the union, in an earnest desire to avoid a strike, has lowered its wage demands far below what its officers and members think would be a proper settlement. Perhaps the company likewise made a higher wage offer than it feels has economic justification. On the basis of the economic situation of the company concerned, and possibly the situation in its entire industry, both sides are convinced that their compromise proposals are respectively too low and too high. In such circumstances it may be entirely appropriate to place no minimum or maximum limits on the arbitrator's discretionary authority. Then if the facts so indicated, he might decide that no increase was justified, or he might award a wage adjustment considerably higher than the amount that the union was willing to accept in order to avert a stoppage.

There have been instances in which the willingness of either side to change its mind and to agree to arbitrate wage disputes, after having firmly resisted arbitration, was considered sufficient basis for an arbitrator to go above or below the last wage proposals of the parties concerned in making his decision.

ADVANCE PREPARATION

In most important cases, the persons representing the management and the union are not the same ones who handle the dispute in its initial stages. Both sides ordinarily view, and always should view, arbitration proceedings important enough to warrant their being represented by the best-qualified spokesmen. In the case of a multi-plant company, it may be the personnel director or one of its

legal staff who is well-versed in labor relations. The union spokesman may well be an international representative or an attorney.

Ascertaining the facts The representatives for both sides invariably want to go over the entire situation well in advance of the arbitration hearing. The advance review may bring about great surprises. The local management, for example, may be so convinced of the soundness of its position that it has failed to ferret out all the important facts. The officers of the union local likewise may be sure they are right and have failed to dig deeply into the entire situation. If the case involves a discharge which the union protests as being without sufficient cause, it may well happen that a foreman was out to get a man and fired him for an offense that he had long tolerated on the part of other workers. Accordingly the management will want to determine, by careful review of all relevant circumstances, what was done or not done in the way of disciplinary action.

It is only human nature for an employee protesting his discharge to put his best foot forward in explaining the circumstances to union officials. In his initial story he may deliberately or unintentionally fail to disclose some pertinent fact. The union representative, in preparing for arbitration, will want to make absolutely certain that the discharged employee was telling the truth and the whole truth.

It is equally important for company spokesmen to get all the facts first, regardless of how sure they are that they have an ironclad arbitration case. In one case which actually took place, the company was so certain that it "had the goods on" an employee who had been discharged that it did not take the trouble to search out all the facts and to ascertain whether it did have sufficient grounds for firing him. The union filed a grievance in behalf of a youthful worker, claiming that he was unjustly discharged. When the unsettled dispute over the discharge finally came to arbitration, the union spokesmen related the boy's side of the story. This was that he had been smoking, as charged by the company at the hearing, but that when he was suddenly told one day that he was being let go, neither the assistant foreman, under whom he worked, nor the foreman nor the personnel office, had been able at that time to tell him the actual reason. Further than that, the union pointed out, the assistant foreman himself was known to have taken time out to smoke.

But at the hearing, the company spokesmen asserted that on several occasions the worker had been caught spending too much time

in the men's room smoking. They further stated that when he had been asked several times to abstain, he refused to obey.

The arbitrator then questioned the worker. When he asked him to tell under oath how many times he had been spoken to about wasting time, the boy's reply was "Once." Then when the foreman and the assistant foreman, who were witnesses at the hearing, gave their side of the testimony, it developed that their stories of the reason for the discharge so contradicted each other that the arbitrator could give credence to neither of them. The only reason for the firing that was apparent to the arbitrator was a groundless personal dislike for the worker on the part of the foreman. This of course he did not consider sufficient grounds for discharge.

The company, realizing that it had not prepared its case well and had failed to assemble all the pertinent facts beforehand, volunteered to reinstate the boy and gave him back pay for the time lost while he was out.

As previously indicated, there have been innumerable instances where a bombshell has been exploded at the hearing, to the great surprise and consternation of the management or the union. Surprise evidence may be admitted to demolish the position of one side or the other. But it does not follow that either party should withhold all of their evidence at the earlier stages of the grievance procedure when it might be possible to settle a dispute without resort to arbitration. Yet there are instances when either side is so firm in its insistence that the case go to arbitration, that the only prudent course to follow is to reserve the surprise evidence for initial presentation to the arbitrator.

Having ready access to proof If the dispute to be arbitrated involves the proper classification of a job, written job descriptions for the work should be reviewed and a determination made as to whether or not the employee's actual duties coincide with the description. It is not what is written on paper that counts in determining how a man's job should be classified or what rate he should receive. The written job description is of course important. But it is what the man does and has been doing on his job rather than what the company months or years ago decided he should do that carries most weight in arbitration proceedings. Consequently the union as well as the management, in preparing for a case of this kind, will want to get all the facts as to the real nature of the employee's duties

and as to any changes in his work assignments since the original job description was prepared.

If the dispute involves, say, the adequacy of a pay rate, there is no substitute for facts in bringing about proper disposition of the case. The arbitrator will want to know first what the applicable contract clause is and if this clause enables the union to protest and take to arbitration, if necessary, any newly established rate that is set too "tight." Then he will want to hear or see proof from both sides as to the propriety of the rate. No amount of argument will prove a satisfactory substitute for factual information. If the process is an intricate one or the machine one not commonly used throughout industry, the arbitrator should be provided with diagrams or illustrations. Even better, he should be permitted to view the machine in actual operation under as nearly normal conditions as possible. Some companies, for reasons best known to themselves, are often unwilling to let an arbitrator go to the department involved in the dispute to get first-hand information on the ground. This may be a most short-sighted attitude if they are convinced they are on good grounds and have any real desire to win their case. Concealing information directly or indirectly and more particularly by refusing to let an arbitrator get first-hand information invariably raises a question as to the motive of the management in being unwilling to let all the facts be known.

It is not enough for the union merely to contend that a rate has been set too tight. If it is to be successful in challenging the propriety of the rate, it too has an obligation to present factual evidence. How long have the employees concerned been on this particular incentive job? What have their actual earnings been? Can it be established that they are thoroughly competent workmen and that they have tried their best to produce enough to earn a satisfactory premium? Have new elements been introduced by the rate setters that were not common to the rates established on other jobs? These and many other questions have an important bearing on the case. If neither side voluntarily brings out all the facts, the arbitrator himself will wish to elicit the pertinent information. To be sure, it is usually possible to present post-hearing statements on questions raised at the arbitration hearing, on which neither side was immediately prepared to give the answers. It is better, however, to anticipate the questions and be prepared to give the proper

answers and any appropriate explanations thereof while the arbitration hearing is in progress.

Then there are the types of cases which involve interpretation of seemingly unclear or ambiguous contract clauses. Representatives of both parties should dig thoroughly into the history of the contract negotiations. Was a clause omitted from the present contract that gave either to the management or to the union certain well-defined rights in the previous contract? Was a clause that the union considered undesirable or unworkable bargained out of the contract without a specific reference to its omission in the new contract?

A specific illustration might be cited. Assume the present contract stipulates all employees with five years' service as of June first of the current year are entitled to two weeks' vacation pay. Three employees are discharged on June 15. The union asserts that since each of them has had at least five years' service they should be given two weeks' vacation allowance at the time of their discharge. The company points out that there is nothing in the contract requiring payment for vacations to persons whose services have been terminated. That is entirely true. But in the previous contract there was a clause stating in effect that no vacation allowances would be payable to persons leaving the employ of the company for any reason. The union had objected to continuation of such a clause in the new contract. It won its point. It failed, however, to insist on the inclusion of a clause expressly guaranteeing to all employees their right to vacation pay upon discharge. The history of the negotiations in such a case will be given much weight by the arbitrator. If the intent of the parties as disclosed by the testimony of either side was to eliminate the restriction on vacation rights for discharged employees, the arbitrator would no doubt hold that the persons dropped from the payroll during the vacation period, if otherwise eligible by reason of length of service, are entitled to vacation pay.

Conceivably, no contract clause can be cited by either party as determining the proper solution to the question in dispute. The issue may be a departure from past practice that, in the opinion of the union, had been so well established by custom and precedent that no specific contract clause seemed necessary. Perhaps the issue was such a simple one as a "coffee hour." Perhaps the employees of the plant and the employees of all other plants in the neighborhood had since time immemorial been permitted to leave their jobs once or twice a day to have near-by diners send in coffee each day

at regularly scheduled times. Then the management decided that this practice interfered with efficiency and insisted that it be stopped. In the absence of a contract clause giving the company unfettered right to change its shop rules or working conditions at its own discretion, there would be nothing for the arbitrator to go on except the established practice in the company and the community. Here the burden of proof would be on the union that the withdrawal of coffee hour privileges went counter to the established practice. And it should be prepared to back up its contention with detailed facts not only as to what had gone on in the company itself over a considerable period of time, but what actually were the practices in other concerns in the area.

In all discharge and disciplinary cases, it is essential to prepare factual evidence to show the nature of the job record made by the employee or employees involved. Is the offense with which the employee is charged sufficient in and of itself to warrant dismissal or layoff? Or has there been an accumulation of more or less serious offenses, with the latest one being the final straw? It might happen that the management has singled out a particular individual for ultimate discharge and has carefully accumulated evidence of petty foibles or misdoings. On the other hand, the worker might actually have had a long history of unsatisfactory output or poor conduct without having engaged in any single offense which all by itself could be regarded as a proper cause for discharge. The company representative who is to present the case should familiarize himself not only with the factual incidents but with the management's motives. If the motives seem questionable and if the evidence is likewise dubious, he will probably want to get a settlement instead of proceeding to arbitrate. Conversely, if the union representative takes the pains to search out all the circumstances leading to the discharge or other disciplinary action against an employee, and finds that the last offense may have been trivial but that the worker involved has had a long record of unsatisfactory performance, he too may wish to seek a settlement instead of proceeding to arbitrate a lost cause.

Collecting evidence "at the scene of the crime" Whenever it appears to either side that an incident may ultimately go to arbitration, all the pertinent facts should be obtained and recorded while the incident is still fresh in the mind of everyone concerned. Take a fight between two employees, for instance, that results in the dis-

charge of the alleged aggressor. The discharged employee may contend that he was unduly provoked by the other person or that there were extenuating circumstances that made a lesser penalty than discharge the only proper thing to assess. Ordinarily, several weeks or even months elapse before a dispute of this kind is handled in the successive stages of the grievance procedure and ultimately goes to arbitration. In the meantime, some of the witnesses to the brawl may have taken other jobs. They might have moved to other localities. It is always difficult if not impossible to induce former employees to travel considerable distances to appear at arbitration proceedings. Then too their recollections of the incident may have faded, regardless of whether or not they are still in the company's employ at the time of the arbitration proceeding.

Thus it is desirable, when cases arise where union or management actions may be later disputed, for both parties to get detailed written statements from the witnesses as soon as possible after the event.

Unless the arbitration proceeding is conducted by a lawyer or a person with legalistic tendencies who insists on observance of strict rules of evidence and conducts the hearing on a courtroom basis, both parties will be permitted by the arbitrator to submit in evidence written statements by witnesses for whom there is valid reason for their not appearing at the hearing. It is true, of course, that there is greater value in having an eyewitness appear and testify personally and subjecting himself to cross-examination by the other side. Even when this is impossible, there is still an advantage in getting his full and freely stated version of the incident in writing and signed by him immediately after he has seen whatever happened that led to the dispute.

If a witness who has prepared and executed a statement as to what he had observed cannot appear in person at the hearing, there are entirely proper ways to substantiate that he actually had made the statement that is introduced in evidence. Should it be the union that is introducing the statement, the shop steward or other union official who requested him to make the statement can testify that this individual actually dictated the statement in his presence. The union stenographer who took the dictation can be present as a witness that she actually took down verbatim everything that the individual had said in the statement and that she saw him sign it. Naturally the same type of evidence can be presented by manage-

ment when witnesses in its behalf cannot appear at the arbitration hearing.

Here is a case in point. And it is an actual case. The full story of the dispute is set forth in Chapter VI. The factor pertinent to the issue under discussion was whether or not Mr. R. was actually intoxicated when he reported for duty as a deck man on a ship. When he showed up for work the mate of the ship, thinking he was drunk, told him to go see the operator of the vessel, presumably to be discharged. Two international representatives of Mr. R.'s union happened to be present when all this happened. They at once took Mr. R. to a clinic to get a sobriety test. When the clinic refused to make such a test, they took him to a private practitioner, who gave him an examination and issued a statement to the effect that Mr. R. could not have been intoxicated at the time when he reported for duty. Obviously, there was only one chance to obtain this sort of evidence and that chance occurred within an hour or so after the employee was suspected of being drunk.

Use of contradictory testimony Another type of usable evidence is that obtained from prior proceedings perhaps of an entirely different nature. Thus if an employee claims he is physically able to do a given job and was unjustly discharged on the grounds of physical incapacity, the employer has the right to refer to and use the employee's testimony at a workmen's compensation hearing where he sought to obtain an award for permanent or temporary disability. A case of this sort is described in Chapter IV. In this case, the company brought out the fact that at a compensation hearing, a few months earlier, an employee had contended that an occupational injury had so disabled him as to prevent him from performing his usual duties. Of course the arbitrator was obliged to weigh all the testimony, but he could not fail to be impressed by the fact that before one tribunal and for the specific purpose of getting a monetary advantage, the employee insisted he could not do his job and that later, when he was removed from the job because of this testimony, he asserted he had no physical impairment.

Value of preparing surveys The types of evidence that are useful in preparing cases where new contract clauses are in dispute will naturally depend upon the nature of the unsettled issues. When the wage clauses of an unfinished contract are referred to the arbitrator without limiting him to resolve the difference between the latest demand of the union and the company's latest counterpro-

posals, all sorts of factual data may be found relevant. To cite a single illustration, here is an actual set of questions propounded by the arbitrator to the parties in a wage dispute, when neither side came to the arbitration hearing prepared to substantiate its position by factual evidence.

1. What are the rates paid by competing firms for same or very similar work.
2. How do annual earnings of workers compare with annual earnings of workers employed by competing firms.
3. What are the rates paid by other firms to workers of similar occupations, in non-competitive lines, in the vicinity.
4. What consideration is given, when rates are set, to skill required, dexterity acquired, length of service, etc.
5. Has consideration been given to recent increases in cost of living.
6. Should company's financial showing be given special consideration.
7. What effect will a wage increase have on the company's future ability to compete successfully in its usual market.
8. Will an adjustment in wage rates tend to accelerate production, and will failure to do so tend to encourage production stinting.
9. Will increased plant output provide, through reduced overhead cost, a margin for wage increase without actually increasing total labor cost.
10. Will a wage adjustment aid in the promotion of better understanding, more cooperation, and improved relationship between management and employees and the union.
11. What justification can be presented for declining to grant the increase asked by the union or any part of it.

In this case the parties concluded during the course of the arbitration hearing that an outside survey should be made to determine the rates paid for comparable work by competing companies in the industry. The arbitrator himself was requested to make the arrangements for the survey and the facilities of the U. S. Department of Labor were obtained for this purpose. Much more frequently, both parties will make their own wage surveys to demonstrate prevailing conditions within the industry or community. Then it is incumbent upon the arbitrator to weigh the conflicting evidence on its merits and in so doing he will give due consideration to the thoroughness and accuracy with which the data had been compiled, as well as to the pertinence of the data obtained from other companies to the wage situation of the company concerned in the dispute.

Use of prior arbitration decisions as precedents Time and again, especially when attorneys represent the parties in dispute, the arbitrator will be confronted with all sorts of citations, or of prior decisions made by him or other arbitrators. These citations, the parties

will argue, should be construed as establishing binding precedents and should control the settlement of the current case. Unfortunately, from the lawyer's standpoint, this just doesn't work. No previous arbitration award is binding upon any arbitrator. It is his function to adjudicate the current dispute. In so doing, he is bound to decide it by interpreting the applicable contract clause, if there be one, or on the basis of the merits of the particular situation, if the contract itself is silent on the issue in dispute.

Nevertheless, there is some value to the use of prior arbitration awards in preparation of new cases. Earlier decisions point the way to what arbitrators have considered especially pertinent or relevant. At the most, they indicate how a case is likely to be decided if all relevant facts are substantially the same.

In actual practice, no two cases are identical. Usually there are differences in contract language. Invariably there are differences in the actual situations to which the contract clause applies. Then also it is the arbitrator's duty "to call his shots as he sees them." Perhaps an earlier arbitrator, in making a decision on a dispute involving the same contract clause, made a serious mistake. The new arbitrator does not have to perpetuate that mistake. Indeed, it is his duty to correct it, at least to the extent of rendering the proper decision in the case before him.

What the lawyers refer to as the doctrine of *res judicata* does not apply to arbitration proceedings. *Res judicata* means simply that a matter once decided by the courts cannot be brought into the same or a different court for entirely new legal proceedings. Not so with arbitration. Assume that in an earlier contract the management and the union had negotiated an elaborate set of clauses relating to overtime pay. The clauses were so loosely worded that the union took the position that they meant that a person who had worked a normal five-day week from Monday to Friday and then put in eight hours on Saturday was entitled to triple pay for his Saturday work. Why triple pay? Because the contract provided for time and one half for all work performed in excess of 40 hours a week and also provided for time and a half for all work done on a Saturday. The union might have convinced an arbitrator that these contract provisions actually called for the compounding of the overtime premiums and that therefore triple pay was required under these circumstances.

Then suppose that in negotiating a new contract the parties left

unchanged the earlier language respecting payment of overtime. A new dispute arose concerning the proper basis for payment to employees working on a Saturday, having put in a regular 40-hour week. The dispute could again be arbitrated. No doubt the new arbitrator—or even the previous arbitrator, if he were designated to hear the current case—would admit in evidence the earlier decision bearing upon the same point. But he would not be bound by it under any conditions. He would be obliged to hear all of the evidence and consider all the arguments. Fresh material might induce the arbitrator who had heard the same case previously to reverse himself. If the facts warranted it, a new arbitrator would undoubtedly reach a decision contrary to the previous one. In any event, he would have the power to do so.

Preparation of exhibits Regardless of the nature of the dispute to be arbitrated, there will invariably be written documents to be presented in evidence. The contract itself is ordinarily the first exhibit to be introduced. If the contract has not been reproduced in printed form, a typewritten copy should be prepared for the arbitrator. Or if the question involves a single contract clause, a copy of that should be presented to the arbitrator.

Any affidavits or other statements to be presented at the hearing should be duplicated with copies provided for the arbitrator and the opposing party. Similarly, when exhibits in the form of wage tabulations, production records, and so forth, are to be introduced, these too should be duplicated so that the arbitrator and the other party can inspect copies when they are presented in evidence.

Occasionally, the arbitrator will himself raise questions at the proceeding which will necessitate preparation and submission of statistical data after the hearing is over. Whenever possible, both parties should anticipate the arbitrator's request for factual data and have all material at hand when the hearing begins. If however this is not possible, and it becomes necessary to submit to the arbitrator exhibits or statements of one kind or another after the conclusion of the hearing, the established practice is to furnish to the other party a copy of any document that is forwarded to the arbitrator.

There is something formidable and impressive about an affidavit. Indeed, if statements are obtained in advance of the hearing from persons who may or may not be called upon to testify as witnesses, there may be some advantage in having the persons swear to their statements before a notary public. And yet, as a matter of common

knowledge, a person who is inclined or impelled to make a false statement usually has little compunction about swearing to his falsehood. Therefore, most arbitrators will give as much weight to a simple nonlegalistic statement prepared in layman's language and merely signed by the person making it as they will to the most legally prepared affidavit with all its whereases, and so forth.

Advance interviews of witnesses No lawyer would put a witness on the stand without knowing in advance what the witness was going to say. That does not mean that the lawyer should or would put words in the witness's mouth. In this one respect arbitration proceedings are comparable to courtroom trials. If it appears to the arbitrator that a witness has been coached to say only the things favorable to his side of the case and to conceal or ignore the unfavorable aspects, the arbitrator will be inclined to question his integrity and discount the credibility of all he says. Some management and labor representatives, in presentation of arbitration cases, try to prove too much. They do not want their witnesses to tell the whole story. Hence they may try to influence the persons who testify in their behalf to give a biased slant to their statements, or to minimize or ignore certain essential particulars. This sort of tactics invariably makes a bad impression. The arbitrator's duty is to render even-handed justice within the framework of the contract or the terms of the submission. Any attempt by either side to prevent its witnesses from giving the whole picture as they know it, either by coaching in advance or by efforts to shut off their testimony during the hearing, is likely to prove a boomerang.

PRESENTATION OF CASE AT HEARING

Statements under oath The procedure to be followed in the hearing of any given case is ordinarily determined by the arbitrator himself. There are certain matters, however, on which he will be guided by the desires of the parties to the dispute. Thus, for example, he will want to know immediately whether either side wishes the witnesses to be sworn—i.e., to testify under oath as they would be required to do in court. If either side wishes this formality to be observed, the arbitrator will order that all witnesses must be sworn.

If the issue in dispute is one of contract interpretation where the evidence is confined mostly to exhibits showing the language of the contract itself, the history of previous contract clauses, or the appli-

cation of the contract in a given situation, it might be futile to require witnesses to testify under oath. But the situation may be different where the facts of a given situation are in dispute, as often happens in discharge or disciplinary cases. There, overzealous witnesses may be inclined to stretch the truth. And being put under oath may serve as a deterrent to exaggerated statements or downright falsifications.

Use of court reporters The arbitrator usually leaves it to the parties to decide whether or not they wish to have a complete record of the proceedings taken down by a court reporter. Their decision on this matter will depend upon the importance and complexity of the case. Suppose the dispute involves the discharge of a union official under circumstances that might give rise to the suspicion that he had been fired in violation of the unfair practice clauses of the Wagner Act that have been perpetuated under the Taft-Hartley Act. Either the union or the management may have reason to believe, as a result of prior review on the dispute in the grievance procedure, that conflicting or distorting statements may be made by the other side. One way to nail down these conflicts is to have everything put on the record. Then, on reviewing the transcript of the proceedings, the arbitrator will have readily at hand the complete statements of all the witnesses and can thus easily determine who if anybody has contradicted another witness on the same side.

There is another advantage from the standpoint of the arbitrator himself. When a court reporter records the entire proceedings the arbitrator is thus enabled to give his undivided attention to everything that is being said. Otherwise, he must spend much time in making notes. And there is always a possibility that he might, while taking notes, overlook some salient point.

There is a further advantage to the parties themselves. If the case is an important one and there is any reason to expect that there will be other cases of the same general nature, a full transcript of the proceedings will enable the representatives of the management and the union, as well as their associates, to study the presentations of both sides after the hearing is over to learn what mistakes were made, to see the types of evidence the arbitrator considered most important, and generally to derive whatever benefits that are obtainable from a complete review of the case. For purposes of this sort, a transcript of an arbitration hearing is just as useful in the plan-

ning of future cases as a complete motion picture film of a football game is to the coaches of a team preparing for its next game.

For every "pro" in arbitration matters there is usually a "con" or two. There are several cons on the question of court reporters. First is the question of cost. The cost runs high. Twenty-five to 50 cents per page for triple-space copy are customary charges. The transcript for a full day's hearing quite often runs to several hundred pages. Thus the cost of getting a transcript from a court reporter may run from \$50 a day. Indeed, if the case is a minor one, this cost may be greater than the monetary issue that is being settled through arbitration proceedings.

Moreover, the presence of a court reporter tends to formalize the proceedings unduly. Foremen and rank-and-file workers are not accustomed to speak "on the record." They may suffer the equivalent of stage fright. In their embarrassment they may fail to testify fully and effectively on all the questions put to them.

Use of stenographic transcripts When court reporters are not used it is commonplace for either or both parties to have their own stenographers on hand to take notes on important testimony. By so doing they can accomplish substantially the same purpose as though a complete transcript were obtained, if their objective is to make a record for use in reviewing the outcome of the case and in training their people for presentation of future cases. Unless the arbitrator requests otherwise, the notes made by a stenographer for the union or the company remain the property of the party that provided the stenographic services. Such stenographic notes, if not a verbatim transcript, represent an edited version of the proceedings. They may even be subject to further editing or correction by the representatives of the side providing the stenographer. Should the arbitrator want to use the notes of the stenographer provided by one of the parties, clear-cut arrangements should be made in advance to enable the other party to go over these notes in order to be able to point out to the arbitrator any consequential omissions or errors.

Place of hearing The logical place to hold an arbitration hearing is at the actual scene of the dispute. That is the office of the concern involved. Of course, there may be occasions when the union wants the proceedings conducted on neutral ground. That is likely to happen only where there is a feeling of hostility and suspicion between the adversaries.

Company lawyers may want for their own convenience to hold

the hearing at their own offices. There would be as much reason for having the proceedings held at the offices of the union. Except under the most unusual conditions, the most desirable place is the plant or office where the persons involved are employed. Then witnesses can be brought from their work without undue delay, thus minimizing the expense and inconvenience to all concerned. No one can be completely certain as to what types of documentary evidence may be needed or as to who may be called upon either for direct or rebuttal testimony. By holding the hearing at the place of employment it is easier to bring in the required documents or people than to have them transported to some other location.

Order of presentation After the "submission" is reduced to writing and executed by both parties, the next step ordinarily involves a brief explanation or summary of the issues by the spokesmen for both sides. Such explanations enable the arbitrator to learn quickly what the shooting is all about. Then the significance of otherwise obscure bits of testimony, as well as their relevance to the main issues, will become apparent to the arbitrator when the parties present their direct testimony.

The first to speak in giving a summary and also to present the direct evidence should normally be the side originating the grievance. Here too there may be exceptions. In discharge and disciplinary cases which have been protested by the union, the union has to take the position that management made a wrong decision. Before the arbitrator can decide the question he will want to hear fully the management's side of the case. Consequently, he may direct the company to proceed first.

It is conducive to orderly procedure for the arbitrator to insist that each speaker or witness be heard out without interruptions from the other side. That is true even where the proceedings are of the most informal nature and no attempt is made to follow courtroom rules of evidence.

Arbitration is not the same as contract negotiation or mediation. Hence the proceeding should never be permitted to degenerate into a "bull session." Ample opportunity can be afforded both sides for full presentation of their views when the witness is cross-examined by the opposing side after conclusion of his direct testimony. Following cross-examination, the party presenting the witness is entitled to develop additional testimony in the nature of rebuttal through further questioning.

It is important to hear all the evidence on one issue, as well as the arguments pro and con, before the parties proceed to present their position on another issue, when more than one case has been brought up for arbitration.

Again it is also in the interest of orderly procedure for each of the parties to have a single spokesman. This individual should be the one to make the preliminary and closing arguments, to present the witnesses and to ask them questions, and to cross-examine the witnesses for the other side. If all participants pitch in, the result is nothing but chaos and confusion. The other representatives of the union or management are always free to pass on notes to their chief spokesman or to confer with him briefly without disrupting the proceeding. Then he can decide whether he himself will ask a question or make a statement, or call upon someone else to take over temporarily when the point at issue can be more adequately handled by a person intimately familiar with the immediate situation.

After all the evidence is in, the arbitrator will invariably give both sides an opportunity to sum up and to review the principal arguments in support of their own position. If the matter is complex, he may want both parties to prepare and submit to him, later, briefs summarizing their positions. Should he not request this himself, but one of the parties desires to do so, he will point out to the other party that it too can have the same privilege. Then he will set a deadline for submitting the briefs, which perhaps will be anywhere from ten to thirty days after the conclusion of the hearing, and direct both sides to exchange with each other the briefs that are to be submitted to him.

Still another step is sometimes taken in cases of extraordinary importance. That is for the arbitrator to grant to both parties the opportunity to submit comments on the post-hearing briefs presented by the other side. The purpose thus served is to enable the management and the union to point out to the arbitrator any possible inaccurate or misleading statements in the brief submitted by the other contestant.

Should courtroom techniques be followed? There are two schools of thought as to how closely the arbitration proceeding should follow the pattern of courtroom procedures. One school holds that arbitration is a form of litigation with the umpire or judge selected by the parties themselves. Hence the necessity for

an arbitration proceeding which requires observance of rules of evidence and use of other courtroom techniques. The other school holds that arbitration is a substitute for litigation, and if either or both sides prefer the legalistic approach, they might as well take their case into the court in the first instance.

The views of the first group were well summarized some years ago by Wayne L. Morse, now United States senator, who was at that time frequently named as arbitrator in major disputes on the West Coast. During that period, Mr. Morse had this to say¹:

... Arbitration is a judicial process. The arbitrator sits as a private judge, called upon to determine the legal rights and economic interests of the parties, as those rights and interests are proved by the record made by the parties themselves. The principle of compromise has absolutely no place in an arbitration hearing. The moment an arbitrator compromises one of the issues involved in a case that moment he disqualifies himself as an arbitrator. Argument, no matter how persuasive, unsupported by evidence and facts, is of little value to an arbitrator when he is called upon to decide a typical labor dispute.

One essential to fair arbitration is orderly arbitration procedure. Unless the person who is empowered to decide a dispute between A and B is required to decide that dispute in accordance with reasonable rules of procedure, then the rights of A and B are at the mercy of the arbitrary discretion of the judge. Such a judicial system would truly result in a dictatorship by the judiciary. I think that procedural guarantees are so important to the protection of substantive, legal rights, that labor and employers should refuse any agreement to arbitrate a labor dispute until they first investigate the rules of procedure which are to be applied in that arbitration hearing.

This author subscribes to the other school of thought. His concept of the role of arbitrator is a person who endeavors to bring out and assess all pertinent facts and to reach the proper conclusion without regard to technicalities. Suppose a piece of paper is signed by someone but not notarized. If its contents are to be believed at all, would they be believed with more assurance if somebody paid a quarter to have a notary public put his seal on the document? He thinks not. Should highly important and illuminating information be excluded from consideration by the arbitrator because a layman presenting the case for his union forgot to bring the matter up until after his side had rested and then tried to introduce this material during the time allotted for rebuttal testimony? The question answers itself.

¹ *The Short Course in Public Relations*. Published by American Council on Public Relations, Stanford University, San Francisco, Calif., 1940.

But why labor the point? Contestants in arbitration proceedings who want a judicial atmosphere and full observance of courtroom technicalities can always find a lawyer who is willing to play judge for them. Those who are most concerned with getting an arbitration award which really metes out justice, instead of providing a verdict for the side that has the smartest lawyer or other spokesman, will no doubt select an arbitrator who subscribes to this point of view. And every experienced arbitrator is qualified to follow whatever type of procedure is desired by both parties if the nature of the dispute is such as to warrant departure from the type of proceeding that he customarily employs.

Offers of compromise During the course of many an arbitration hearing the representatives of one side or the other have thought that they have lost their case. Then they want to settle and settle quickly. How should they do it? In the first place, offers of compromise should never be made in front of the arbitrator. It is always permissible to ask for a recess. The representatives of the side desiring to compromise may first wish to confer together and then to present their proposal to the other side. The arbitrator does not want to know what is going on. In fact he should not even be informed that the purpose of the recess is to seek a direct settlement. If the proposals for the compromise are successful, so much the better. Then the arbitrator can be notified. To get the settlement clearly on the record, perhaps the parties will request the arbitrator to note the terms of the settlement, and, if he approves, to embody it in an award of his own. That makes the action definite, final, and binding on both sides. On the other hand, a compromise voluntarily entered into by both parties would be equally binding, even if not incorporated in an arbitrator's decision.

Inexperienced representatives of unions or management are often prone to jump at wrong conclusions while a hearing is in progress. If the arbitrator follows the lead from one side and questions a witness for the other side, they may think he has already reached a conclusion and is probing for further evidence to support it. Usually they are wrong.

The nature of the arbitrator's own questions or comments in presiding over a hearing is not necessarily indicative of the trend of his thinking. In the first place, the arbitrator does not reach his decision until all the evidence is in. Perhaps a witness for the union speaks poor English. He has difficulty in getting his story across.

Naturally the arbitrator wants to learn the full story. He questions the witness gently and sympathetically. It does not follow, however, that a sympathetic manner indicates agreement with the views being presented by the witness.

Arbitrators are always free to take up a line of questioning where the union or company witnesses leave off. In so doing they are not assuming the role of prosecutor, judge, and jury. They are merely eliciting all the facts they consider pertinent.

Consequently, the trend of the evidence itself, rather than the apparent attitude of the arbitrator toward the merits of the case, should be the controlling factor if either side thinks a compromise should be worked out during the course of the hearing, and the case withdrawn from arbitration. Many times, to suggest a compromise is the only prudent course to follow. Only the foolhardy will not admit when they are about to be defeated. But sound judgment rather than guesses as to the trend of an arbitrator's thinking should always be the basis for seeking compromise settlements.

No special techniques necessary By far the majority of arbitration cases are presented by laymen. There are no special tricks of the trade. There should be none. All that is necessary is careful investigation and straightforward presentation of the facts. Trickiness is no substitute for honesty and complete candor. With thorough preparation and complete presentation of all the evidence, it is to be anticipated that the arbitrator's decision will go to the party that has been right all along.

The remaining chapters of this book are devoted to specific illustrations of virtually all kinds of arbitration cases. Therein may be found suggestions for handling similar types of cases, and these suggestions should be of much more value than any involved discourse on how either the company or union representatives should handle themselves in arbitration hearings.

4. CASES INVOLVING DIRECTION OF WORKING FORCE

In the minds of many employers, nothing is more important than the right to determine the working assignments of their employees, and how jobs are to be performed. These matters are of equal importance to union leaders. It is usually impracticable in drafting a union agreement to cover all the contingencies that might arise in the operation of a plant. Hence, problems of direction of the working force involve a no-man's-land of contract interpretation that frequently has to be decided through arbitration proceedings. There are also many situations where a specific contract clause has to be written in such broad and general terms that arbitrators' rulings may be necessary to determine the application of the rule in individual cases.

In the absence of specific contract clauses dealing with matters of this sort, the arbitrator is obliged to examine past practice in the company or industry and to resort to a rule of reason. What amounts to a body of "common law" is gradually being built up through arbitrators' decisions to cover the situations that most generally arise and that present similar elements. For instance, many arbitrators have held that where there is no contract clause to the contrary, management has the right to order employees to perform any work which is available. Of course there are exceptions, such as where an employee has good reason to believe that in following the boss' orders he would risk his own life or limb. Both the usual type of problem and some of the exceptions are illustrated in actual cases presented in this chapter.

DEMOTION FOR PHYSICAL UNFITNESS

The electrical workers' union (AFL) representing the employees of a public utility company protested the demotion of a foreman to a lower rated job. Under the contract, working foremen were

included in the same bargaining unit as the service and repair men who worked on power lines. The question submitted to a three-man board of arbitration was as follows: "Was Mr. D. demoted by the company from his job as service foreman and relief line foreman on November 6, for just cause? And if not, is he to be reinstated to his former job?"

As the testimony was presented to the board, it became necessary to break it down in two parts: (1) Was the demotion justified in the first place? (2) Had new facts developed which would justify the board in directing the company to reinstate the foreman to his previous job, currently or at some future date? Such separate treatment of the issues in the dispute frequently becomes necessary where claims are made for back pay in disputes over cases involving transfer or demotion.

Union's contention According to the union, Mr. D. had been employed by the company for about nineteen years and had an excellent job record. In 1943, while working as a service foreman, he was up on a pole on a lineman's assignment, when the pole broke. He fell about 15 feet to the ground, seriously injuring his back and head. Three months later he was able to return to work and was put back on his regular job.

In 1944, Mr. D. strained his back in trying, at the risk of his life, to rescue one of his fellow workmen who was electrocuted while on an emergency job after a severe hurricane. Although complaining about his back ailment, he nevertheless stayed on the same job. The following year he was given a larger crew of men, with the title of service foreman and relief line foreman.

In September, 1946, Mr. D. was informed by the company that he would have to take a job with lighter duties, as his superiors thought he had become incapacitated so as to be unable to perform the regular duties of a service foreman. The new job in which he was put paid him 26 cents an hour less than his previous one.

The union indicated that the apparent reason for the foreman's demotion was his testimony, two months earlier, before a workmen's compensation referee, in a case involving his claim that he incurred disability on account of a back injury. But, the union contended, the company had permitted Mr. D. to remain on his foreman's job for two months after he appeared before the referee, and during this entire two-month period he had performed his work satisfactorily. The union also contended that no matter what

the man testified before the compensation referee, he was capable of doing the full job of foreman, and therefore his testimony should not influence the board of arbitration.

Contract clause in question There was a definite contract clause applicable to the situation which the company brought to the attention of the board of arbitration. This clause read in part:

"... If an employee after long and faithful service becomes incapacitated so as to be incapable of performing his regular duties, he shall be assigned to such work as he can reasonably be expected to do, in the order of his seniority at the highest rate then paid to any employee in the classification to which assigned. . . ."

Company position The company spokesmen argued that they had complied fully with the contract clause cited above, and had acted in entire good faith in demoting the foreman on account of his physical condition.

It was brought out that at the hearing before the compensation referee Mr. D. was found to have had 17½ per cent permanent disability, on account of a back condition attributable to the accidents he had had in 1943 and 1944. As soon as the record of his testimony and the referee's award were brought to the attention of the management—two months after the date of the hearing—the decision was reached to give him another job. The gist of Mr. D.'s testimony was that because of his accidents he was nervous, his back hurt him continuously, he had headaches, and was often dizzy. On the basis of this testimony, his superintendent felt that if he were to remain on his job as foreman he might subject himself to serious injury and further claims to compensation, and also might expose other employees to unnecessary risks. At the time of his demotion Mr. D. was informed by the management that the company would provide further medical attention, and, if his condition improved, that he would be eligible for his old job or any other higher-rated job he was physically able to fill.

Findings and decision After hearing the case, the arbitration board suggested that the company and the union try to reach a settlement between themselves. The board also recommended that Mr. D. undergo a physical examination by a reputable physician having no connection with the parties to the case.

The arbitration board was informed thereafter that no settlement had been reached, but that the union and the company had

agreed on a competent and reputable physician who would examine Mr. D. at an early date and report his findings to the board. When the physician's report was received, it disclosed that Mr. D. was then in excellent physical condition, and the doctor commented that whatever the reason for awarding him 17½ per cent permanent disability, he wasn't disabled any longer. The doctor recommended putting Mr. D. on full duty. Accordingly, on the basis of the doctor's findings, the arbitration board directed that Mr. D. be reinstated to his former position at his previous rate of pay, as of the date when the doctor's report was made known to the company.

That settled the first of the two questions the arbitration board had to decide. The other question was, of course, whether or not Mr. D. was improperly demoted in the first instance, and entitled to back pay as a foreman. On this point, the board held that the record of the proceedings before the workmen's compensation referee made it clear to the company that it was obligated to take steps to safeguard the foreman and other employees by not permitting him to do work which he swore he was unable to do. Hence, the board concluded that from the time of his demotion until the time of the receipt of the doctor's report, the board was in no position to rule that Mr. D. was fully fit to perform his previous work as foreman. Thus, the board concluded, the company had not improperly demoted the foreman, and no back pay should be awarded.

REFUSAL TO PERFORM WORK ASSIGNED

Here is another case where the shoe was on the other foot. In this instance, it was a group of employees that did not want to do the work assigned to them because they felt the working conditions were unsafe. The employees were represented by a chemical workers' union (AFL) and worked for a chemical company operating machines that processed a product containing nitrocellulose. Since this substance is inflammable, everyone concerned—management and workers alike—was aware of the fact that fires or explosions could result from unsafe practices.

The question to be arbitrated involved whether the workers should be required to run four so-called stuffing machines "in tandem," as the company required, or whether they should not be so required, because of the union's insistence that the operation of

the aforementioned machines "in tandem" represented an excessive hazard to the operator.

Up to the time the dispute arose, each employee operated a single machine. The union was informed in advance of the proposed change in operation and agreed to it. The following day, however, the union objected to the assignment of two machines to one operator. Some two weeks later the new method of tandem operation was begun. Ten days after that the workers involved struck and stayed off their jobs for a three-week period.

Union's contention The sole objection of the union, so it contended, to the operation of machines in pairs instead of singly, was that the employees were afraid of the possibility of an explosion. Their fears arose because of the manner in which they had to feed the hoppers and press down gatherings of materials which occasionally formed in the machine. The union also pointed out that certain safety devices had been installed and other improvements in methods had been adopted that would make the operation more safe, but only after the workers returned to work following the strike. While the union conceded the company's right to run the machines singly or in tandem, it insisted that it was the duty of the company not only to provide necessary safety devices, but also to satisfy the workers "psychologically," that their safety was fully protected.

Contract clause The only contract clause which either party considered as having any applicability was the one providing that "the employer shall continue to make reasonable provisions for the safety and health of the employees at the plant during the hours of their employment." Thus, since the union admitted the company's right to operate the machines in tandem if the working conditions were safe, the sole question for determination by the board of arbitration was whether it actually was safe for one employee to operate two machines at the same time.

Company's position The company spokesman pointed out that the machines in question operated on a low-pressure basis, that there never had been any explosion or accident connected with the operation of these machines, and that other types of machines in the same plant had been operated safely in tandem. The company presented to the board elaborate exhibits showing the construction of the machines, and also introduced testimony as to the safety precautions that were taken to prevent possible injury to workers. It was further admitted by the company that new guards had been

installed since the machines were first operated in tandem, and that other improvements had been made to protect the workers against any hazardous conditions.

Arbitrators' decision After making a personal inspection of the equipment and the operations, the board of arbitrators ruled that the company's requirement for the operation of the machines in tandem was proper and that operation should be resumed immediately on this basis. In reaching its decision, the board declared that it had done so "upon the assurance that all the necessary safeguards have been taken and all improvements on the guards surrounding the hoppers have been installed, and that the steam pipes will be properly covered as a prerequisite to the requirement of the operation of these machines in tandem."

This is the type of case where, as frequently happens, the arbitrators felt inclined to go beyond the letter of their assignment and to give some wholesome advice. They did so with the desire to prevent the recurrence of a strike over matters of work assignments. Here is what they had to say:

The Board is fully aware of the fact that the misunderstanding in connection with the operating of the machines in question in tandem is attributable to a type of thinking on behalf of the representatives of the Company and the workers that failed to take into account that a mutuality of interests between Management and workers required, first, that reasonable provisions for the safety and health of the employees is to be the first consideration, and second, that there shall be no interference of any kind with factory operations, and that only through the efficient operation of a plant can benefits accrue to both Company and employees. If this type of thinking prompted the action of the representatives of both Company and Union, the Board is confident this episode, which resulted in the arbitration proceedings, would not have occurred. The Board is hopeful that both sides will benefit by this experience and will work "in tandem" in all matters, as well as in the operation of the machines in question, and fully recognize that their interests are intertwined, and that only through continuous production and the maintenance of the good health and well being of the workers, can full satisfaction be achieved by all.

IMPROPER REJECTION FOR PHYSICAL UNFITNESS

Management's right to determine an employee's physical fitness for a given job is called into question in many arbitration proceedings. Sometimes cases may arise where the union charges discrimination against an employee on the pretext of physical unfitness, but for some other undisclosed management motive. Thus, if the contract prohibits discriminatory treatment, the question is

clearly an arbitrable one. In other instances, where an employee with established seniority rights is laid off or refused reinstatement, the question can be brought to arbitration on the basis of alleged violation of the employee's contractual rights.

A boiler manufacturing company was involved in a dispute with a machinery workers' union (CIO) over its refusal to reemploy a union member who had been laid off because of slack work. Without invoking any specific contract clause, the union raised the following question before the arbitrator: Is the company's refusal to reemploy Mr. F. justified? And if the employee is entitled to reemployment is he to be compensated for time lost by him due to the company's refusal to reemploy him?

Union's contention After a layoff of two weeks, Mr. F. was called back to work. He was given a physical examination by the company's doctor and declared unfit for work. His rejection was reported to the union, but the company officials refused to give any information to the union as to the nature of the man's condition that made him physically unacceptable.

Thereupon the union had Mr. F. examined by two physicians. Each of them pronounced him fully qualified to perform any job in the plant.

Moreover, the union pointed out that Mr. F.'s work previous to his layoff had been satisfactory, and the conditions used by the company physician as the basis for refusing reinstatement could not have developed in the two-week period while he was idle. Since this incident occurred in wartime, when the manpower scarcity was most acute, there was every reason to utilize Mr. F. on his old job, which he had been able to perform without any apparent difficulty of any sort. The union also argued that the company's reasons for rejecting Mr. F. were so flimsy that it must have had an ulterior motive in refusing to put him back on the job.

Company's position The company maintained that it had the sole right to determine the fitness of any worker, and that it was entitled to rely entirely on the statements of its own examining physician. This physician testified at the arbitration hearing. His testimony was to the effect that Mr. F. had defective eyesight, and varicose veins on both legs. On questioning by the arbitrator, the doctor admitted that a report on Mr. F.'s condition made by another company physician the previous year showed a less favorable condition than his own examination.

Arbitrator's decision Among other things it was brought out at the hearing before the arbitrator that Mr. F.'s job was ordinary labor not requiring any special skill and not unduly hazardous. There remained the question of the company's right to insist on physical examinations, as well as the factual question as to whether or not Mr. F. was in good enough shape to do his old job acceptably.

The arbitrator ruled that the company unquestionably had the right to examine employees before hiring them. He held, however, that there was a question as to the justifiability of a physical examination by the company of an employee who was being recalled after two weeks of layoff. The arbitrator further commented as to the propriety of dismissing a man when the company doctor's report showed that he was in better condition than when he was first hired the previous year. Finally, the arbitrator pointed out that the doctor who testified for the union reported no organic condition that would warrant his being rejected for a "man's sized job." On these facts the arbitrator ruled that Mr. F. was entitled to be reemployed immediately, with back pay for time lost, less any earnings obtained elsewhere during his layoff.

The issue submitted to the arbitrator for his decision left him no option but to decide a question on which apparently competent doctors disagreed. This did not mean the arbitrator had to assume the role of a consulting physician. On the one hand, the company doctor had expressed the opinion that Mr. F.'s physical condition might make him more subject to accidents than other employees in better health. He also brought out the point of the higher liability under the workmen's compensation law that resulted from the continued employment of Mr. F. On the other hand, the union doctor testified that the man's vision was 85 per cent of normal and was completely corrected by glasses, and that he had only a slight enlargement of the veins in one leg. Since neither doctor testified as to any disabling physical impairment, it was for the arbitrator to determine, in the light of reasonable industrial practice prevailing under wartime conditions, whether Mr. F. could adequately do an ordinary laboring job. This question, of course, he decided in the affirmative.

LACK OF QUALIFICATIONS FOR BETTER JOB

A sweeper in a metalworking plant requested a transfer to the job of an oiler. During his eighteen years of service he had worked

in a number of different jobs as an operator and helper. His union, an independent union of metalworkers, claimed in his behalf that the man was thoroughly familiar with all the departments of the plant and all equipment, and that he was qualified for the job of oiler, as well as entitled to it on the basis of his seniority.

The issue presented to the arbitrator was a simple one, namely, "Is Mr. C. entitled to the job as oiler, as the union contends?"

Union arguments Mr. C., prior to taking the job of sweeper, had worked in the mill on seven different jobs of a semiskilled or skilled nature. He had asked for and obtained a transfer to the sweeper job because of unfortunate family circumstances. Before taking this job he had been on a rotating-shift basis, alternating between two weeks on day shifts and two weeks on night shifts. When his wife died, he requested a transfer to a day shift job so he could take care of his children evenings. The only available job was that of sweeper, and he took that until a more desirable job on the day shift became available. Another reason for taking this unskilled job was that it involved working seven days a week and thus a greater take-home pay. And after the death of his wife he needed more money to take care of his family adequately.

In the light of his long and diversified experience and his knowledge of all types of equipment in use in the mill, as well as his seniority rank, the union insisted he was entitled to the job of oiler when it became vacant.

Contract clauses involved Two entirely different clauses were cited as having a bearing on this case. These were in a sense contradictory. One vested in the management exclusive authority to direct the working force, including the right to hire, promote, demote, or transfer employees. This clause had only the restrictive proviso that the management would not exercise its right for the purpose of alleged discrimination against the union. (No question of alleged discrimination for union activity was brought into the case by the union.) The other clause applicable to the situation read as follows:

When new jobs are created or vacancies occur, the employees of that department shall have the opportunity of filling the position in accordance with their departmental seniority and the ability to perform the job. . . .

Now this provision would seem to deny management's unfettered right to transfer or promote anyone it wished without questioning by the union. But it does add a proviso, in the sense that the term

"ability" was expressly defined as follows: "the employee's faculty to perform a job in accordance with the product quality and production standards for the job."

Company's position The company conceded that Mr. C.'s seniority status would entitle him to the job of oiler if he had sufficient qualifications for it. On the other hand, the management spokesmen insisted that Mr. C. did not have enough initiative and responsibility to do the oiler's work. This job, they pointed out, had to be done with a minimum of supervision, and any neglect or oversight would cause much damage. Thus, they held that the risk of putting Mr. C. on the job was too great to be prudently incurred.

Arbitrator's decision The arbitrator held that under the terms of the agreement giving management the right to determine who should be transferred or promoted, the company was acting within its rights in deciding on the basis of its own experience and observations that Mr. C. was not qualified for the job as oiler. In deciding the case in favor of the company, the arbitrator declared:

Were the arbitrator to substitute his judgment for that of the company and rule that C. is in possession of the qualifications to perform the functions of an oiler, he would, in all fairness, have to accompany his finding with a guarantee to reimburse the company in the event that C. failed to perform his duties properly at all times, and as a result of which there would be caused a serious loss to the equipment and to the production activities of the mill. This the arbitrator cannot be expected to provide.

PROMOTION ORDERED ON TEMPORARY BASIS

Where either the type of job or the type of contract clause is different from those in the case just cited, the result would probably be an entirely different decision by the arbitrator. In fact, a contrary decision was rendered by the arbitrator in another case involving a union's contention that a workman should be promoted to a better job. In this instance, the union (the machinery workers, CIO), contended not only that Mr. S. should be advanced to the job of gear hobber operator, but that he should receive compensation for loss of earnings sustained by him when his company, a manufacturer of lubrication equipment, put another man on the job, despite the second worker's lesser seniority.

Union's contentions It was brought out by the union that Mr. S. had had four months' greater seniority than Mr. P., the man who was given the job of gear hobber operator. During his six years'

service with the company, Mr. S. had performed his work satisfactorily as a machine operator, and for a short period had run the gear hobber machine as a substitute operator. Neither he nor Mr. P. had ever done setup work on the machine, and it was necessary for the company to put Mr. P. in training to do the setup work, which had become an essential part of the job. Mr. S.'s experience and record indicated that he could readily learn to do the setup work if he were given the same sort of training.

According to the union, the only difference of opinion between it and the management was whether Mr. S. could do the setup work satisfactorily after undergoing training. This the union insisted could be ascertained only by giving Mr. S. a chance to prove his ability while learning and doing the job.

Controlling contract clause The current contract had a clause which read: "When vacancies in a job classification are to be filled, ability to perform the work and seniority shall be considered. When ability is relatively equal, preference shall be given to the employee having greater seniority." In the light of this clause, the main question to be arbitrated hinged about the comparative ability of Mr. S., who had greater seniority, and Mr. P., the man who got the job.

Company's position The company stressed the fact that the applicable contract clause mentioned ability first and seniority second. In the preceding contract, these two items appeared in the reverse order. Hence, so the company argued, it had been agreed by both parties that ability was the more essential factor when a promotion was available.

Then the company also called attention to the fact that Mr. P. had operated the gear hobber machine for more than three months as a substitute operator, while Mr. S. had been assigned as a substitute operator for only a few days. Moreover, Mr. P. had had much more opportunity to observe the setup work than did Mr. S., and therefore could learn how to do it more speedily. Finally, the company contended that Mr. P. had been a machinist, while Mr. S. had only been a machine operator and had never been regarded as a full-fledged machinist. In the light of these circumstances, the company felt it could exercise its own discretion and it had done so by choosing the worker whom it considered more capable of performing the job.

Arbitrator's decision It appeared to the arbitrator that in the case of both workers, their ability to fill the job of gear hobber operator had to be determined after a considerable period of training. And the contract was silent concerning the company's unilateral right to determine ability in advance of a trial, when a difference of opinion concerning the ability of two or more candidates for a job arose. The arbitrator therefore ruled that Mr. S. was to be given an opportunity to fill the job and was to be retained on the job if within three months of the date he was put on it he had proved his ability to perform the job requirements acceptably. The arbitrator was aware, of course, that special training was necessary for Mr. S., but that the company had indicated that whoever was put on this job would require about three months' training in the setup phase of the work.

The request of the union that Mr. S. be compensated for the loss of earnings during the period after he was rejected for this job was denied by the arbitrator. The reason was that the company had acted with obvious sincerity in assigning the job to another operator who the management, albeit erroneously, thought was entitled to the job.

PROMOTION OUTSIDE OF BARGAINING UNIT

As many unions and employers have learned to their great disappointment, they cannot expect an arbitrator to write something new into a contract merely by asking him to interpret or apply the terms of an existing contract.

Here is a case in point: The steelworkers' union (CIO), who represented the production employees of a locomotive manufacturing plant, demanded that one of their members be promoted to a supervisory job. The question presented to the arbitrator read: "Is A.J.T. entitled to a promotion, as claimed by the union, or not entitled to the same, as contended by the company, the contract provisions to govern." Note the wording of the question as presented to the arbitrator. The significant part of this submission was the inclusion of "the contract clause to govern." This definitely limited the arbitrator's discretion to the interpretation of the existing contract, instead of permitting him to go over and above the contract and decide the question in any manner that he thought equitable.

Union's contention The union argued that Mr. T. had been passed over for promotion to a position as supervisor in favor of a

Mr. W., an employee with much less seniority. They pointed to a clause in the contract providing that in all cases of promotion "within departmental classifications," seniority would govern where certain factors such as training, ability, experience, and adaptability were relatively equal. The union had a further point to make. There was another provision in the contract giving management the right to hire, suspend, transfer, or discharge for proper cause. Since this provision omitted any mention of promotions, it was logical to conclude, so the union argued, that promotions to all types of jobs had to be determined on the basis of the seniority clause just quoted.

Company's position The company rested its case squarely upon the language of the contract itself, arguing that under the contract the company could use whatever standards it chose at its own sole discretion, in selecting people for supervisory jobs. The recognition clause in the contract entirely eliminated all supervisors from the jurisdiction of the contract. And therefore the union had no right to question the company's action in filling a job not covered by the contract. The union's reference to "promotions within a departmental classification," the company regarded irrelevant, in view of the absolute exclusion from coverage of all types of supervisory jobs.

Arbitrator's decision While expressing an opinion to the effect that seniority, as well as ability, *should* be taken into account in selecting employees for promotion to supervisory positions, the arbitrator ruled that the contract did not give the union the right to bargain for its members concerning available supervisory jobs. He thus sustained the company's position.

SELECTION OF SUPERVISORS RESERVED TO MANAGEMENT

Even when there is a specific contract clause vesting in management the sole right to choose its foremen and other supervisors, the matter may be brought to arbitration if the clause is not clearly worded or appears to be in conflict with another part of the contract. The electrical workers' union (CIO), representing the employees of a chemical company, registered a protest against the management's practice in picking supervisors from outside their bargaining unit, and brought the case to arbitration for a general ruling as a matter of contract interpretation.

Nature of dispute The union contended that time and again the management had informed its members that all employees

would be considered for better jobs and that, when openings for supervisory positions occurred, qualified workers in the same departments would be eligible for promotion on the basis of their seniority. According to the union, the company failed to follow through on its statements. As the result of the selection of an "outsider" for a supervisory job, the union decided to bring the issue to a head.

In doing so, it tried to induce first the company and then the arbitrator to give an unusual interpretation to the following contract provision:

In all promotions or transfers to more desirable jobs, the company will not consider the factors of race, color, creed, national origin, sex, or any other factors than seniority, training and ability to do the work. The company reserves the right to select its supervisory staff.

The union construed this section as requiring the management to use the factors of seniority, training, and ability in selecting employees for supervisory jobs, as well as all other types of jobs. It argued that the sentence giving the company the right to choose its supervisory staff, appearing as it did in the same paragraph with the sentence determining how all better jobs were to be filled, could not and should not be interpreted as giving the company the unfettered right to do as it pleased.

The company reviewed the history of negotiations that led to the inclusion of the sentence in question. It pointed out that the management had insisted after considerable bargaining that it get the sole right to pick its supervisors and that a specific trade had been made with the union before this right was obtained. The company maintained that the first sentence cited above referred only to promotions that came under the agreement, and that in order to establish this point unmistakably it had insisted on the insertion of the sentence.

Arbitrator's decision The arbitrator reached the following conclusion:

Though it may appear that the second sentence of the clause is subject to the limitation of the first sentence, because of the fact that it was not written as a separate and distinct paragraph, it nevertheless appears evident that it was added in the contract for the specific reason of avoiding the very question that has been raised by the union, and therefore is binding on the parties in accordance with their mutual intentions when same was agreed upon between them.

It was admitted by the union spokesman that supervisory employees of a certain rank should definitely be chosen by the company without any question from the union. The arbitrator is unable in this instance to differentiate between the various ranks or grades of supervisory employees, and the contract certainly does not permit of any such differentiation.

The arbitrator therefore rules that until such time as a different agreement is reached between the parties, under the present contract the company has the right to select its supervisory staff.

WHAT THE WELL-DRESSED EMPLOYEE SHALL WEAR

Arbitrators are human, although the losing parties sometimes think they must just temporarily have escaped from the nether regions. Occasionally they have to depart from weighty matters of contract interpretation and look at some of the bare facts of life.

Such a privilege was given vicariously to the arbitrator who had to decide how much midriff, if any, could be exposed by an attractive young lady while on her job in a textile firm. The young lady in question had been sent home to change her clothes and docked for the time lost in doing so.

For some unexplained reason, the arbitrator did not have a chance at the hearing to see the young lady "model" the dress that gave rise to the dispute. Perhaps, because of his innocence and tender years, both parties decided to rest their case on a photograph. Obviously, it did not shock the arbitrator. He had seen much more epidermis exposed on many public and private beaches. The young lady, Miss M., testified that she had worn her midriffless dress on many occasions, and, up to the time an assistant superintendent of the plant objected to it, nobody had raised any question about it. She felt greatly embarrassed when she was sent home to change her clothes, and her father informed her that he thought the management was most unreasonable. Her father was very strict as to her conduct, she testified, but had always permitted her to wear the dress in hot weather, and she was by no means the only one wearing that type of dress in her community.

The company's side of the case was most briefly stated. It contended that it was their right and duty to see to it that decency in the attire of all their workers be maintained throughout the plant.

The arbitrator decided in favor of Miss M., and awarded her pay for the time lost when she was sent home to change her costume. In reaching his decision, the arbitrator took into account present custom, since there were no precedents or past practices

to guide him in reaching a solomonic decision. His conclusion was: "what was considered quite improper a few years ago is now accepted as proper in the best of circles. The exposure of a limb, an arm or other parts of the human figure, is no longer considered as 'forbidden.' . . . The arbitrator has noted many types of 'apparel' worn by workers, or the lack of apparel, to which no one seems to have any objection, and which did not seem in any way to disturb the regularity of work in the plant."

FORCED RETIREMENT OF AN EMPLOYEE

The method of doing something that management considers justified, and in fact might be justified, can be sufficiently questionable to give rise to arbitration proceedings. That was what happened in the case of a 69-year-old employee of a machinery manufacturing corporation, who was suddenly informed that he was "through," but would be given a retirement allowance. His union, the electrical and machine workers (CIO), complained that he had in fact been discharged without proper cause, and forthwith took up the matter as a grievance. The question as framed by the parties for decision by the board of arbitration read: "Was F.M. wrongfully discharged, as the union claims, or was he retired, as the company claims?"

This was a very narrowly worded question. In fact, it precluded the arbitrators from making any positive award, either of reinstatement or back pay, in the event they decided the company had been in error. Indeed, after the decision was reached, the parties had to come back for a supplementary decision and award.

Union's position The union termed Mr. M.'s "retirement" a wrongful discharge on these grounds: (1) He had been in the company's employ for twenty-four years and had had a good employment record. He was in good health—in fact better than he had been in for four or five years—and he was still able and willing to work. (2) An arbitrator's ruling in a case involving Mr. M.'s classification, which awarded him a better classification and back pay amounting to \$1400, just prior to Mr. M.'s "retirement," undoubtedly had influenced the company in the action it took in this second matter involving Mr. M. The company had even chosen the day after the arbitrator's award was handed down, to tell Mr. M. of his discharge. (3) The company's action had violated a section of the contract.

The union also claimed that the fact that the company informed

Mr. M. *after* his case had been certified for arbitration, that he would be paid a pension equal in amount to the social security benefit to which he was entitled, indicated that it was no more than an afterthought, and was entirely contrary to all practiced methods of retiring faithful employees. It therefore did not represent a retirement in the true sense of the word.

Company's position The company stated that in 1942 the subject of Mr. M.'s retirement had come up for discussion, but had been postponed because of the manpower shortage. In 1944 Mr. M.'s retirement was again discussed, but the pending arbitration pertaining to his job classification made it necessary to hold off any action until the arbitrator's award was made known.

The company spokesmen told the arbitrator that frequently retirements such as Mr. M.'s were effected upon the recommendation of the supervisors. They cited two recent retirement cases in which there had been no complaints. At the same time, the company representatives admitted that the company had no regular retirement plan.

In trying to prove that Mr. M.'s case was one of retirement and not of discharge, the company stressed the fact that Mr. M. had himself told his union representative that he was being "retired." Also, Mr. M. had been told by his supervisor, who led him to the general manager's office to hear of his imminent retirement, "They are thinking of retiring you. They are going through the department and taking all the old fellows out." Then the general manager told Mr. M. again, on his last day, that he was "not discharged, but retired."

Subsequently, the company spokesman further pointed out, Mr. M. had come back to accept the company's pension offer, and from that time up to the present (nine months later), he had accepted the company's monthly pension checks.

Arbitration board's finding The impartial chairman of the board of arbitration was much more impressed with the union's case than with the company's. He noted that the company had no established retirement plan, and no set rule for letting employees know in advance of their impending retirement.

A majority of the board also found it significant that the company failed to follow any pattern whatsoever as to the age, state of health, or any other condition which might serve as a basis for

retirement, so that employees could know they were being retired without discrimination, and not discharged.

"It is generally recognized," the board pointed out, "that when an employee who has rendered many years of faithful service, and whose usefulness has diminished to a degree that his retirement is warranted, he is made aware of it sufficiently in advance, and he is fully aware of what is taking place."

This was the board's way of letting the company know it did not think much of its crude and abrupt statement to Mr. M. when a supervisor simply told him, "They are going through the department and taking all the old fellows out." It was like telling a man, "We decided to clean house today and throw out all the old shoes. You are one of them."

The board cited the employee's good—and even improved—health, as well as his never having heard any complaint about his work, as further reasons for the decision it finally reached. And, the board brought out, ". . . the company's testimony revealed the fact that other employees older than Mr. M., and at least one other who was recommended for retirement, are still being employed, while M., who appeared to be perfectly able to work, was let out, thus indicating that the company singled him out for dismissal and chose to call it a retirement."

The board reached the conclusion it did for one other reason—the apparent synchronization of the employee's "retirement" with the arbitrator's award that lifted Mr. M. out of a third- and into a first-class job rating. *"And the very first week when he received his first class rate of pay, he was dismissed from the service with a statement that he was retired and he was to be provided with compensation . . .* The calling of this dismissal a retirement later on does not make it so."

The board therefore found that Mr. M. had been discharged without just cause. Unquestionably, the prime reason for the board's decision was that sufficient consideration was not given Mr. M. when his severance was decided upon.

About all that the board of arbitration could do was to conclude, as it did, that the company had indeed unfairly discharged Mr. M. But what then? Should Mr. M. be reinstated and awarded back pay? And if so, how much?

The submission did not call for any positive action and, consequently, the company and the union representatives had to call in

the arbitrators to confer further with them on the disposition of this case.

After the reopening of the case, and after lengthy correspondence between the parties, the arbitrators weighed further all the circumstances of the matter, and reached the conclusion that Mr. M. should be considered retired by the company, and receive retirement money for his lifetime from the company, and that he be reimbursed for his improper discharge to the amount of twenty-six weeks' pay.

REEMPLOYMENT NOT MANDATORY

It is common practice for union leaders to stress alleged discrimination against active members of their union when taking up cases in their behalf. Of course, such discrimination, particularly in the early days of the Wagner Act, was anything but uncommon in many segments of industry. But when management can prove a good reason for changing the status of an employee, and the union's complaint of discrimination rests primarily on suspicion rather than on fact, it is the arbitrator's duty to decide the case on the facts rather than on the basis of suspicion.

A case of this nature arose in a textile mill, when the management refused to reemploy Mrs. M., a long-service worker who had left of her own accord the previous year. The sole question presented to the arbitrator was whether or not the company was obligated to give a job to this former employee.

Union's contention According to the union, the woolen workers union, AFL, Mrs. M. resigned her job when she had requested and been refused an increase in her pay to make her rate the same as that received by other employees doing similar work. At the time of this request, a union organizing campaign was under way and she had been active in signing up employees for membership. When her attempt to get a pay increase failed, she then asked for and obtained a release from the company. (This incident happened in wartime, when manpower regulations required a release for employees leaving an essential industry.)

Some six months later, Mrs. M. was informed by some of the employees of the mill that new people were being hired to do the same sort of work that she used to do. She applied for a job but was turned down. Shortly thereafter, two new employees were hired to do exactly the same type of work that she had previously done for years.

The union insisted that the company was "taking it out" on Mrs. M. for her activity in helping to organize the plant, and that therefore the company was guilty of improper discrimination against her.

Company's position There was no real dispute between the management and the union as to the facts concerning Mrs. M.'s departure from the employ of the mill. On the other hand, the company spokesmen insisted that if it had not been for the fact that Mrs. M. had a family to support and that her father, brother, and sister were also employees, she would have been discharged long before she decided to leave. According to the management, Mrs. M. had been a constant source of trouble to her overseer, being of a very nervous temperament and hard to get along with. It was also pointed out that after leaving the mill, she had worked for at least two different employers at irregular intervals. Finally, the management maintained that it had known nothing about her union activity in recruiting members until after her resignation. Then too, the management made the point that it had the right under the contract to choose its employees from the open market, without interference by the union.

Arbitrator's decision Since the contract gave to the company the full and complete right to hire or to decline to hire whomever it chose, and gave to the union no right of questioning the company's decisions in such matters, the arbitrator had no option but to hold that the company was not obligated to rehire Mrs. M. He so ruled.

At the same time, the arbitrator felt impelled to make known to both parties his views as to the equities of the case, apart from strict interpretation of the contract, by which he was bound. Here is what he had to say:

1. Employee in question has worked for the company many years with an apparently good record as to work performance and with no evidence that she was ever warned in regard to any poor work or breach of rules.
2. The activities of this worker, in visiting homes of workers and securing their signatures to join the union, puts her in a category somewhat different from the other workers who did not engage in this activity and, in the minds of the union membership and others, makes her vulnerable to discrimination by the management.
3. Regardless of any assertions to the contrary, the refusal by the company to give this employee a chance to ever secure work at this plant again is bound

to result in misunderstanding and antipathy to the company by very many employees.

4. The unionization of workers employed at this branch of the company having been accomplished only recently, it is very essential that everything possible be done to reduce misunderstandings to a minimum and to promote the feeling amongst all the workers that the company is not antagonistic to their organization.

5. It is likewise essential that everything be done by both management and union leadership to carry the conviction to all the employees that the interests of the workers and the company are closely intertwined and that they have very much more in common than they have in conflict.

6. Arbitrator, therefore, feels that the company's interests would best be served, in the long run, if it voluntarily took action in this instance by giving Mrs. M. an opportunity to work at the plant when an opening was available, and thus put at an end any possible misunderstanding and misinterpretation of the company's attitude, which the arbitrator is convinced is a genuinely wholesome one.

JOB BELONGING TO UNION

When a contract provides for a union shop and also stipulates the specific types of work that have to be done by union members, disputes still may arise as to whether or not supervisory employees exempt from the contract can do any type of work that is ever performed by union members. A dispute of this sort arose in a bank. The union which represented the employees was the office workers' union, CIO. It contended that an assistant cashier of the bank was being assigned to clerical work in violation of the agreement.

Two contract clauses were involved. One made it mandatory for the bank to employ only members of the union to perform all work of a permanent or temporary character, except work involved in certain enumerated positions that were excluded from the agreement. The other clause was the one which excluded positions of a supervisory nature.

It was the union's contention that the assistant cashier was regularly doing some clerical work in the bank's loan and discount department. The bank officials sought to justify their position by pointing out that the assistant cashier had previously performed clerical work in the bookkeeping department, while holding his present position, and the union had never objected. To this contention the union replied that no binding precedent had been established. In fact, just because the union had overlooked a violation of the contract in the past, it was beyond the power of the

arbitrator to hold that it had thereby waived its rights to have all work on jobs covered by the agreement performed by the members of the union.

Arbitrator's decision In the light of the specific contract clauses, the arbitrator ruled that the clerical work being performed by the assistant cashier henceforth had to be done by a union member, and that the bank had violated the agreement by letting him do such work.

UNION TAKING EMPLOYEE OFF JOB

When the terms of an agreement specifically authorize the union to assign one of the employees of the company to union activities that require him to leave his ordinary job, the company cannot prevent the union from taking such action, even though the results may be a serious interference with production. There are innumerable contracts under which management is obligated, at the request of the union, to give a limited number of its members leave of absence to attend international, national, or regional conventions. There is a lesser number of agreements which entitle the union to take a member off his job temporarily to act as a union organizer or for other purposes.

When a contract gives the union the right to requisition a member for any type of union activity, management cannot protest the union's action, unless there is a qualifying clause which sets forth limitations of the union's rights. There was such a clause in an agreement entered into by a small wholesaling concern with the wholesale workers' union, CIO. The clause invoked by the management in protesting the assignment of one of its employees to a union training program, provided that the union shall not unreasonably request leave for training purposes to take place during a busy season. When the management challenged the union's action in assigning one of its members to the training program, it pointed out that this assignment had occurred in the fall of the year, when its sales were at peak volume for the entire twelve-month period. The union rejoined that there had been no undue inconvenience to the management, because the union was ready to supply another worker in place of the man assigned to training.

In the light of the offer by the union to provide a substitute for the employee requisitioned for training, the arbitrator held that the union had not unreasonably removed him from his regular work, and that there had been no violation of the contract.

SUPERSENIORITY VERSUS CAPABILITY

Superseniority—i.e. special seniority rights for union officers and shop stewards—is almost invariably sought by labor organizations in negotiating union agreements, and frequently agreed to by management. Once in a while there is a failure on the part of both parties to specify in clear language to what extent the superseniority principle is to be applied. If the seniority clauses in general are qualified by the requirement that other factors such as ability or experience must also be taken into account, disputes are likely to arise when it becomes necessary to determine who shall be laid off or who shall be retained in times of curtailment of the working force.

Conflicting contract clauses Serious confusion over the meaning and application of two seemingly conflicting clauses arose in the case of a metalworking company and the electrical worker's union (CIO), when a general layoff became necessary upon cancellation of war contracts. The clauses in question were:

Officers and stewards shall have top seniority of service during their term of office on the committee, but shall be returned to their regular seniority of service status upon the expiration of their term of service on the committee.

and

The company will lay off, replace or transfer to the lower grade or classification of the employee, who, in its judgment, possesses the least training, knowledge, skill and efficiency in said employee's present grade or classification.

Union's contention It was argued by the union that Mr. S., a departmental steward, could not be laid off under the superseniority clause guaranteeing officers and stewards top seniority, as long as there was any work to be performed at all in the department where he was employed. Mr. S., the union argued, had performed satisfactory work for more than a year and a half as a class B welder. At the time he was laid off in the course of a wholesale reduction in force, there was still welding work to do, and the job he had been doing was assigned to another employee.

Company's position With the termination of war contracts, the company contended, the operations of the plant were so restricted that there wasn't sufficient continuous work of the nature of class B welding to be done by any single employee. Hence the company had retained its class A welders and made them available to do all types of welding work, including the simpler operations involved in the class B welder's job that Mr. S. had held. Since the second contract

clause quoted above vested in the company the right to select employees for layoffs on the basis of their relative knowledge, skill, and efficiency, and since the company considered that Mr. S. possessed less knowledge, skill, and efficiency than other workmen who were retained on the job, the management insisted that it was acting within its rights.

Arbitrators' decision This case was heard by a board of arbitration. The board held that Mr. S. should have been recalled to his job since it became obvious that there was second-class welding work to be done. In the light of the fact that the company had acted in good faith in laying Mr. S. off and in doing so felt that one contract clause overrode the superseniority clause, the board did not award back pay in full to Mr. S. for the period of his layoff. Instead it recommended that the union and the company endeavor to settle amicably upon some reasonable amount of compensation to Mr. S. for the period of his layoff.

RIGHT TO ASSIGN SPECIAL DUTIES

It is usually impracticable to spell out in a union contract every phase of the operations of a plant that might be subject to a dispute. Even when detailed job descriptions are developed and incorporated "by reference" in the contract, controversies may arise as to who should do what work and when. A dispute of this kind arose between a wool combing concern and the textile workers' union (CIO). Some employees who held the job of "box tenders" suddenly refused to place "tops" in their trucks. The employees admitted that in the past they had occasionally placed the tops in the trucks. They also asserted that if they were compelled to do all the placing of tops in the trucks, it would create a heavy burden on them.

The company contended that it always had been a part of the duty of the tenders to place the tops in the trucks when their tables held four tops. The management maintained that the sudden absolute refusal by the tenders to place any tops in the trucks, when ordered to do so by their supervisors, amounted to acts of insubordination.

Arbitrator's decision The arbitrator found, on hearing the evidence, that many of the tenders had in the past placed some of the tops in the trucks. He ruled, therefore, that past practice should be followed "cheerfully and voluntarily, without undue pressure or compulsion." He further declared:

Workers must realize that management's authority to direct must be respected and followed. Management must, likewise, issue its orders with consideration to established practices and in a manner that will be considered fair and reasonable.

Peremptory and dictative orders do not usually bring the necessary response and the best results. Workers, nevertheless, must in the first instance obey orders given and if these orders cause or create any unfair working conditions, proceed through the union in the orderly way to bring about the correction of any just grievance.

WITHDRAWAL OF SPECIAL DUTIES

In small plants particularly, workers often have to be assigned to various tasks quite outside the normal scope of their regular jobs. Over long periods of time, workers build up vested rights in their various assignments, unless these assignments are modified by mutual accord in the course of negotiating a new contract.

A dispute arose in a small copper fabricating company which gave rise to the following issue for arbitration: whether the company changed the job content of Mr. F. justifiably, and if not, what disposition should be made of the union's complaint with regard thereto. The union involved was the steel workers' union (CIO).

Union's contention Mr. F. had been employed by the company for about sixteen years. His principal occupation was that of copper-smith. While he worked full time as a coppersmith during his regular daily shift, he also had had regularly assigned duties before and after the regular shift. These duties included the opening of the plant a half hour before the regular time, janitor work, and the closing of the plant after the shift was over.

Mr. F. had been active in union affairs. He was a member of the first negotiating committee to deal with the management. The initial negotiations were unsuccessful and a protracted strike occurred. When the strike was terminated upon the successful completion of a contract, it was agreed that all former workers would return to their jobs. The first day, Mr. F. was given the keys to open the plant, but later the same day the keys were taken from him, and he was not permitted to do the extra work he had previously performed over a long period. He was thus deprived of an hour's extra work each day at time and a half.

The union argued that the management's action in depriving Mr. F. of this additional work and pay was attributable to resentment against him on account of his union activities.

Management's position Mr. F. had been given his extra work many years ago, when rates of pay were much lower than the rates currently in effect. The firm had never considered that Mr. F.'s real job included these janitorial and custodial duties which are ordinarily performed by unskilled help at much lower straight-time rates. When the agreement was reached to return all employees to their former jobs after the strike, the management construed it as applying only to regular jobs. Thus, it felt no obligation to do any more than put Mr. F. back on his job as coppersmith.

Moreover, a contraction in volume and the need for offsetting higher costs of operation made it necessary to put into effect various economy measures. It was for this purpose rather than any attempt to discriminate against Mr. F. for union activities that the extra work had been taken away from him. Finally, the company contended that it had every right to economize where feasible, and that in taking away janitor work from a high-priced mechanic, it was only exercising normal and proper management prerogatives.

Arbitrator's decision The outstanding fact in the opinion of the arbitrator was that no specific understanding had been reached between the firm and the union at the time the strike was terminated that Mr. F. would not be returned to all of the duties he had performed for many years. The arbitrator recognized that it was uneconomical to have a high-paid mechanic doing janitor work. But, the arbitrator pointed out, it was necessary to consider the worker's interests as well as the firm's, and that he undoubtedly had incurred a hardship when he was deprived of extra income by the company's unilateral action. The arbitrator recommended that the parties attempt to negotiate an equitable settlement. The arbitrator ruled that the elimination of Mr. F.'s extra duties was not justified under the terms of the agreement to return all workers to their former duties at the end of the strike. Pending the negotiation of a satisfactory settlement, the arbitrator ordered that Mr. F. be permitted to resume his former janitorial duties on an overtime basis.

RESTRICTION OF OUTPUT IMPROPER

There is more than one way by which a company can get an authoritative and binding interpretation of the current contract when, in the opinion of its management, there has been a violation on the part of the union. One way, of course, is to engage in unilateral disciplinary action when union members engage in tactics that

the management considers contrary to the express terms of the contract. Another way is to file charges of contract violation against the union and let the arbitrator decide whether or not an offense has been committed. The latter course was followed by a large glass manufacturing company when its management thought that a group of its employees, who were represented by the glass workers' union (CIO), were engaging in a slowdown.

Contract clause involved The current contract had a clause which read as follows:

... it is understood and agreed that during the life of this agreement there shall be no strike, sit-down, slow-down, suspension, or cessation of work or any form of interruption of production, nor shall the union or any of its locals, officers, agents or representatives or any of the employees represented by the union engage in any acts adversely affecting production in any plant, department or unit covered by this agreement.

Company's contentions According to the management, the union had ordered some of its members to reduce the speed of their output on the polishing and grinding machines by about 15 per cent. The amount of the reduction was equivalent to the amount of incentive pay earned by the employees over their base rate. The company argued that the union had ordered the reduced rate of output because of dissatisfaction with the incentive rate, and had decided to use economic pressure instead of taking the matter up in the regular course through the grievance procedure. The company pointed out that the employees involved had been producing, for a period of time both before and after the current contract was negotiated, a volume of work considerably in excess of what was required to earn their base rate. The management asserted furthermore that the union had no right to direct the employees to reduce the speed of the machines and that by giving such orders they had engaged in a concerted slowdown in violation of the contract.

Union's position It was the union's contention that there was no slowdown within the meaning of the contract, as long as the workers produced enough to earn at least their base rates. Their spokesmen pointed out that the company had never previously taken steps to prevent restriction of output as long as the employees met the base rate requirements. The union further maintained that in this instance it was following the accepted practice of doing a fair day's work for a fair day's pay. The premium for

added work, its representatives contended, created an unduly heavy burden on some of the employees. The union had brought the situation to the attention of the management and sought to have it corrected. Failing to reach an accord with the company, the union officers concluded that they had the right to keep production down to the quota set by the company itself as the proper amount of production before incentive premiums became payable.

In substance, the union charged that there had been no slowdown but merely a proper refusal by the workers to do more than their normal required output.

Arbitrator's decision There was no dispute between the parties as to the fact that there had been a deliberate restriction of output instigated by the union. The sole question to be decided by the arbitrator was whether or not the union tactics constituted a slowdown prohibited by the contract. The arbitrator ruled as follows:

The reduction of output from a customary level for which a combined base plus incentive rate was paid, and which level was in effect for an extended period, is certainly a slowing-down of production and is contrary to the language and intent of the contract into which the prohibition of slow-down was introduced.

Accordingly the arbitrator ordered the union to abandon the slowdown forthwith.

REFUSAL TO PERFORM ASSIGNMENT UNJUSTIFIED

A distributor of gasoline and other petroleum products found it necessary to discipline an employee in order to bring to a head the question as to its right to determine how much work one of its employees should be required to do. This case centered about the refusal of a truck driver to go on a household fuel delivery route without a helper. Thereupon the management laid the employee off and his union, the oil workers' union (CIO), sought back pay for the time when the man was suspended.

Union's contention The union took the position that one of its members, Mr. G., had been unjustly refused work which he was ready and willing to perform on a given day, and was not provided with any work for five days thereafter. The union conceded that this situation arose because of Mr. G.'s unwillingness to drive the truck to which he was assigned without a helper. The man's reason was that he considered this truck too hazardous to handle

by himself in the making of numerous stops in the delivery of household fuel.

It was argued by the union that helpers had been supplied to drivers who were required to handle this type of large and heavily laden truck. To drive the truck without a helper, Mr. G. thought, would have been unduly hazardous. Hence the union considered him fully justified in declining to take over the truck. At the same time, it contended he was entitled to be given other work which was available and which he was capable of performing.

The union urged that in the past other drivers had refused to take out the same truck without helpers and the company had not insisted on their doing so. In the case of Mr. G., however, the company had apparently decided to make a test case by deviating from its former established practice.

Company's position The company categorically denied that driving this truck without a helper was hazardous. In support of its position, it presented to the arbitrator a record of deliveries made with the same type of truck, without helpers, over a three-year period.

The company further made the point that the union had had ample opportunity during negotiations to raise the issue as to the use of a helper on this type of truck, but had not done so. It further maintained that there was another clause in the contract that enabled the union on thirty days' notice to bring up the question of improper work assignments and to negotiate in regard thereto. This was never done.

Arbitrator's decision After investigating the company's premises, examining the trucks, and obtaining a great deal of evidence regarding the methods of their operation, the arbitrator concluded that the company had not required Mr. G. to perform a task that was sufficiently hazardous to warrant his refusal to carry out the company's orders. Accordingly he rendered the following decision:

Arbitrator is convinced that it will redound to the best interest of the union and the company, and will aid in the promotion and maintenance of harmonious labor relations if new working conditions, when deemed necessary by the union, are achieved after orderly procedure of negotiation and agreement, and not through any attempt to force the company to accede to any change insisted on by an individual worker through his refusal to carry out reasonable orders of management which the contract obligates the worker to carry out.

After considering the matter most conscientiously, arbitrator finds that under the circumstances as presented to him, Mr. G. is not entitled to compensation

for the time of layoff imposed upon him, as a disciplinary measure, by the company.

INCREASED WORK LOAD NOT PERMISSIBLE

When a contract states the type of changes in work assignments that can be made at the discretion of management, there still may remain a question as to whether or not a specific change in operating methods is of the sort permitted by the contract. That is what happened in the case of a textile concern which decided to have certain of its operators tend three frames instead of two frames.

Contract clauses In negotiating the contract, the company and the union (textile workers' union, CIO) had obviously anticipated the probability of numerous changes in methods of operation. In fact, they wrote into the contract detailed definitions of various types of changes, including "routine changes," "technological changes," and "other changes." Management was authorized to institute routine changes whenever necessary, but in the event of a dispute as to the effect of such changes, the dispute could be submitted to arbitration.

In the case of technological changes, management had first to inform the union of its intention of making the change, and then negotiate with the union the nature of the job assignments and expected earnings. Failing to reach an immediate agreement, the company had installed the new methods on a trial basis, and if a dispute arose it too could be submitted to arbitration.

The "other changes" mentioned in the contract could not be put into effect if questioned by the union, until the matter had been taken through the grievance procedure, and, if necessary, decided through arbitration proceedings.

Arbitrator's decision In order to reach an equitable decision in this case, the arbitrator had to review and weigh carefully a vast amount of technical evidence relating to practices in the industry and the area, as well as the past practice in the company involved. Such evidence was much too intricate even to be summarized here. The arbitrator concluded that while the changes proposed by the management had a certain amount of economic justification, if he were to sanction such changes he would in effect be modifying the contract. Accordingly he ruled that the company had no right to make the proposed increase in work load without the consent of the union.

CHANGE IN WORK SCHEDULES JUSTIFIED

A dispute arose between a glass manufacturing company and the glass workers' union (CIO) over the action of the management in rescheduling shifts so as to avoid overtime or premium pay for certain groups of employees.

Contract clauses at issue As so often happens, both parties could find a contract clause that seemed to uphold their respective contentions. The union cited a provision which read as follows:

Employees who are working on a regularly scheduled day of eight hours or more shall receive time and one half for the sixth consecutive day and double time for the seventh consecutive day worked in the scheduled work week.

The clause cited by the company was:

A normal work-week shall be thirty six (36) hours. No employee except as herein provided otherwise, will be required to work more than forty (40) hours nor more than six (6) days in any scheduled work-week, nor more than eight (8) hours in any twenty four (24) hour period without the payment of overtime.

It was agreed by both parties that the purpose of changing the work schedules was to avoid the need of having individual employees work six consecutive days of eight hours each, as had been the practice during the war period. Because of the necessity of continuous operations, the company, in determining to have each employee work only forty hours a week, could not do so without splitting the continuity of the work week for some employees. In other words, some employees would have a regular forty-hour schedule including Saturdays or Sundays, and some might be on a Monday-through-Saturday schedule but with a day off in the middle of the week.

Arbitrator's decision The arbitrator could find nothing in the clause cited by the union or any other clause in the contract which precluded the management from changing work schedules so as to prevent employees from receiving overtime pay for Saturday or Sunday work. In substance he ruled that while the company continued to maintain its new schedule on a regular cycle and on a reasonable premium basis, it was complying literally with the terms of the contract, even though the result might produce hardships to employees and obviously brought about a reduction in their take-home pay. But, as the arbitrator pointed out, a solution to these problems was not within the scope of the complaint submitted for arbitration. That was something that would have to be worked out between the

parties, either by modifying the current contract or at the time of negotiating a new contract.

SEVEN-DAY OPERATIONS UPHELD

Once in a while the key point in an arbitration proceeding is not what is in a contract, but what has been omitted from it. Thus, when the electrical workers' union (CIO) took the position that a chemical manufacturing plant had violated its contract when it rearranged working schedules to provide for continuous operation seven days a week, the arbitrator's decision hinged on the undisputed fact that the company had been unwilling to agree to the inclusion of a clause which would have limited the regular work week to a five-day basis, Monday through Friday. The company had objected to such a clause on the ground that it would be impossible and impracticable in the chemical industry.

Of course much extraneous evidence was introduced at the arbitration hearing regarding current and past practice, and the present and previous contracts with varying clauses relating to hours and overtime were reviewed in detail. The fact remained that the arbitrator found no clause in the current contract which prohibited the company from ever introducing seven-day operations in any department. The arbitrator therefore ruled:

It is generally recognized, unless specifically provided otherwise, that the company has the right to determine work schedules. In this case it was proven that a request for a work week to begin on Monday and end on Friday was sought by the union and denied by the company. Under the existing contract, therefore, the arbitrator is impelled to rule that the company, in seeking to introduce a schedule providing for a seven-day week, is not prohibited from doing so.

UNAUTHORIZED REST PERIODS

When a contract contains no provisions for regularly scheduled rest periods or trips to the washroom, management has the right to prevent its employees from concertedly stopping work for rest periods or washroom visitations. Of course, management could not go so far as to prevent its employees from attending to their personal needs. But when the employees in a body decided to take several rest periods a day, all at the same time and without regard to any real needs on their part, management had every justification in putting a stop to this practice.

This was the tenor of a decision rendered by the arbitrator in a dispute between a meat packing company and the packinghouse

workers' union (CIO). The case arose when the management, failing to get voluntary compliance with its instructions, brought the issue to a head by discharging two employees. These employees, as well as many others, had left their work at regular intervals to go to the washrooms. In fact, they had engaged in a procession to the washroom four times each day at predetermined periods. While there was no clause in the contract requiring it to do so, the company had provided two ten-minute paid rest periods for all employees, one in the morning and one in the afternoon. It also provided a full hour for lunch each day. The only defense put up by the union was that the unpleasantness of the work and the dampness of the work place made it desirable and necessary for the employees to leave their jobs at regular intervals.

In reaching his decision, the arbitrator noted that the company apparently had been helpless in its efforts to get the workers to abstain from what seemed to be a designed pattern for leaving their workbenches at regular intervals and in a manner so unusual that it could not be justified as being necessary, natural, or unavoidable. The very regularity of the practice of four absences from the workbench each day for twelve or fifteen minutes, in addition to the authorized recesses and lunch periods, betokens a determination to disregard one's duty to the job. He concluded that management had every right and reason to require more constant and diligent work performance, and if necessary could discharge or otherwise discipline employees for repeated and unnecessary trips to the washroom or elsewhere.

IMPROPER CHANGE IN WORKING CONDITIONS

In negotiating new contracts, many unions insist upon the inclusion of a clause preventing management from changing working conditions or withdrawing privileges that may have been enjoyed by their members in the past. This is tremendously important. As previously indicated, it is usually undesirable to try to include in the contract every conceivable matter involved in plant practices and working conditions. Therefore, some limitations on the right to modify long-established practices is eminently logical from the union's standpoint. Even so, there may be disputes as to what constitutes a change in past practice, or whether the adoption of a new job rule actually results in a cancellation of a privilege.

Even the most carefully drawn contract clauses covering working

conditions and employee privileges will not necessarily preclude the possibility of disputes that have to be arbitrated. Certainly the independent union representing the employees of a fish packing plant thought they had a satisfactory clause when they induced the management to agree to the following:

No conditions or privileges now existing shall be taken away from any employee as a result of the signing of this agreement.

Certainly the management thought its rights were adequately safeguarded when it insisted on the following clauses:

The management shall have complete control of the operations of the company and shall not be interfered with by the union as long as the employer lives up to the conditions of this agreement.

The right to hire and maintain efficiency shall be the right solely of the employer under the provisions of this agreement.

Issue to be arbitrated Despite the apparently clear and unequivocal language of the contract clauses quoted above, a dispute arose when the company required a group of cutters to accept a new time-recording system upon entering and leaving the plant. The union contended that this amounted to a change in working conditions and a cancellation of employee privileges, and took the case to arbitration.

Union's contention When the group of cutters reported to work one day, the company informed them that commencing immediately they would have to take their time cards individually upon arrival to the time desk and deliver them to the company weigher. Likewise, at the end of the day, they would have to take their time cards from the weigher and deliver them to the company time-keeper. This they had never previously been obliged to do.

For the past six years a different practice had been followed. The cutters had been required to accept a time card upon entering the plant and to return it on leaving the plant. While the cutters had been working on an hourly rated basis, there had been an informal, unwritten understanding that the normal hourly production quota for cutters was from 90 to 100 pounds of fish per hour. From time to time the cutters had produced their full eight-hour production quota in less than eight hours. It had been the recognized practice to credit the cutters on the time card for eight hours' work and eight hours' pay, although sometimes they actually put in less than eight hours. Their efficiency and productivity made it pos-

sible for them frequently to "get ahead of production," and leave the shop for a hurried bite or a cup of coffee, or to make telephone calls or to quit work early to make bus connections. In other words, when they had completed their daily quota, they were always considered to have given a full day's work and were given considerable leeway as to the actual hours they put in. Most of these cutters had been employed by the company for nearly twenty years and their efficiency, loyalty, and honesty had never been questioned.

Company's position The principal arguments advanced by management in support of its position were: (1) Under the contract clause vesting in management complete control of the operations of the company, it had the unfettered right to decide how the working time of any of its employees should be recorded; (2) The adoption of a new method for recording time was merely a reasonable shop rule which was commonly used in industry in general, and also in other departments of the company's business; (3) The change in method was comparable to a change from payment of wages in cash to payment of wages by check, and under its right to manage the business the company could properly do this, as well as decide on a different method for recording time; (4) After the current agreement was put into effect, the company had changed the method of recording time for groups of employees in two other departments, and no objections had been raised either by the employees or the union. This, inferentially, upheld its right to do what it had done.

Arbitrator's decision It was apparent to the arbitrator that the introduction of the new rule by the company definitely limited the privileges and conditions theretofore enjoyed by the cutters. The result of the new rule was that the cutters were paid only for time actually spent in production. Previously, if their output was up to par, they were paid for a full day, even if they worked less than eight hours. Hence, the arbitrator ruled that the company had violated the contract by failing to maintain all of the privileges and working conditions previously enjoyed by the group of cutters affected by the change in methods of timekeeping.

RIGHT TO ASSIGN WORKERS TO MACHINES

It is characteristic of most factory workers to prefer the known to the unknown. In that respect they are merely reacting like people do when confronted with unusual situations. It is no wonder that employees resent being assigned to a different machine from the

one on which they have worked, even though the new machine is identical to the other, and their effort, earnings, and working conditions are not in the slightest altered.

Even so, time and again employees have induced their unions to take to arbitration cases involving their transfer to different machines or work places, despite the fact that there was no essential change in their work assignments.

The shoe workers' union (CIO) representing the employees of a shoe manufacturing company took to arbitration the complaint of an employee, Mrs. R., who was not put back on the machine she had previously operated when she returned from a leave of absence on account of illness. In support of its position, the union cited the contract clause reading as follows:

Employees promoted or transferred from one operation to another operation in the same or another department, to replace an employee who is on leave of absence, shall acquire no seniority rights on the new operation which will act to the disadvantage of any other employee on this operation.

It was admitted by the union that when Mrs. R. reported for duty her foreman offered her an older machine of the same type on which she could work. Her own machine was then being operated by an employee with less seniority, and she insisted that because of her higher seniority she should get her own machine back. When she refused to accept any other machine assignment, she was laid off.

In presenting its side of the argument, the company developed the point that before going on sick leave Mrs. R. had asked her foreman if she could return to her own machine when she came back. She was told definitely by the foreman that he could make no such promise. On her return she was informed that there were new machines on order, and she would be assigned to one of these as soon as it was installed. Nevertheless, Mrs. R. refused even to try to operate on another machine which, in the opinion of the management, would have enabled her to do exactly the same volume and quality of work as she had previously performed.

Finally the company rested its case on the simple point that there was no requirement in the contract obligating it to place any employee on any specific machine.

Arbitrator's decision While the practice in the past with this company seemed to have been to recognize workers' claims to a specific machine after they had been accustomed to their own

machines and had worked on them for an extended period, the arbitrator decided that no inherent right to a specific machine could be claimed by an operator under the terms of the existing contract. The arbitrator accordingly ruled against the union and upheld the management.

LESS DESIRABLE JOB ASSIGNMENT UPHELD

Even when the transfer to another machine may produce a temporary loss in earnings or less desirable working conditions, a company has the right to make such a transfer, unless expressly prohibited by the terms of the current contract. A ruling to this effect was made in the case of a worsted manufacturing company after an independent union had challenged the management's right to transfer a spinner to another machine where she was teamed up with a faster operator. When Mrs. G., the employee involved, had been previously paired with a faster worker, her earnings were somewhat higher than after her transfer. The union contended that the seniority clause of the agreement, which provided for exercise of seniority rights in selection of more desirable jobs, made it mandatory for the company to continue to pair Mrs. G. with the faster spinner.

The company contended that the term "job," as used in the contract, related to a given type of operation and set of work assignments, and not to an individual machine. Nowhere in the contract was there any limitation placed upon the company with regard to assignment of employees to various machines operated by employees holding the same job title and having the same job duties.

The arbitrator sustained the company's position. He concluded that transfer from one machine to another does not constitute a change in job and therefore the contract clause relating to exercise of seniority in selection of more desirable jobs had no bearing on the matter.

5. UNION RIGHTS AND PREROGATIVES

Just as management is usually zealous in striving to maintain its rights and privileges, union leaders are equally alert to assert their rights and privileges under union contracts. There is the same sort of no man's land in most contracts, so far as union rights are concerned, as exists with respect to management rights. The reason for the gap is the same—the difficulty, if not the impossibility, of covering every phase of management-union relationships in the contract itself.

Like employers, unions rely greatly upon past practice and precedent. If it has been their traditional right to determine what constitutes "good standing" in their organization, they resent and resist any attempt on the part of management to challenge their own determinations. If in the past certain jobs have been generally regarded as "belonging to the union," they will seek to prevent any such jobs from being taken away from their control. If seniority rights applied exclusively to union members, labor leaders often will try to prevent such rights from being accorded to supervisory employees or other persons excluded from the terms of the agreement.

It is impossible to present any set of general principles that control the findings of arbitrators in cases arising over disputes about union rights and privileges. In some instances the contract speaks for itself. Either the employer or the union has sought and obtained a specific definition or limitation of union rights. In a greater number of instances, the contract is indefinite and therefore the arbitrator has to look at all the facts, review the history of collective bargaining in the company involved, and then decide the dispute on a commonsense basis, rather than on the basis of technicalities. Generally speaking, however, there is a parallel between cases involving management rights and those involving union rights. The parallel is just this: when the contract is silent as to questions involv-

ing the operation of the business or the direction of the working force, it is to be presumed that management retains all rights not specifically yielded by inclusion of contract clauses giving the union joint authority to negotiate a settlement or to take up a dispute through arbitration. Similarly, where matters not involving the operation of the business or the direction of the working force have traditionally been within the exclusive control of the union, the union can retain control over such matters unless in the contract itself it yields its jurisdiction to joint determination—either by the management and itself or by settlement of disputed issues through arbitration proceedings.

SIGNED APPLICATION VALID EVIDENCE OF UNION MEMBERSHIP

With the thousands of so-called maintenance of membership contracts in existence, it is not surprising that innumerable questions have arisen as to what constitutes the act of joining the union. Most of these, when boiled down, present two simple issues: (1) did an employee actually become a member of the union when he signed an application card? (2) thereafter, was the company obligated to discharge him if he failed to remain in good standing with the union for the duration of the contract?

Both of these issues arose in a case involving an employee of a furniture manufacturing company that had negotiated with the furniture workers' union (CIO) what has become a nearly standard maintenance of membership clause. This clause read as follows:

All present employees who are members of the union and all employees who may hereafter join the union, must remain members of the union in good standing for the duration of this contract as a condition of employment.

It happened that the employee involved in this dispute, Mr. P., was a veteran. Because of the special treatment accorded veterans under the "G.I. Bill of Rights," the problem of his membership or nonmembership in the union did not come up for final solution as a grievance until more than one year after he had been reinstated in the company's employ following his return from military service. But the principles to be decided were not affected by his status as a veteran when the case finally came to a head.

Union's contention During the union's campaign to recruit and sign up a majority of the employees of the furniture concern, Mr. P. had signed a membership card. This card, which bore his undis-

puted signature, the date, the name of the company, and Mr. P's department and home address, contained the following language: "I hereby request and accept membership in the above named union, and of my own free will authorize it, their agents or representatives to act for me as a collective bargaining agency in all matters pertaining to pay rates, wages, hours of employment and other conditions of employment." Several months later, Mr. P. entered military service and was reinstated in his former job slightly less than a year thereafter.

Upon his return to the company's employ and for more than a year after, he refused to agree to a voluntary checkoff, which was provided for by the current contract. He also refused to pay any dues or initiation fees directly to the union. The union addressed several letters to him requesting him either to sign a checkoff authorization card or to make other arrangements to pay his initiation fee and dues. Mr. P. ignored these communications. Finally the company was notified in writing by the union that Mr. P., a member of the union, had not kept himself in good standing. When the company refused to discharge this employee, the union took the matter up as a grievance and finally brought it to arbitration.

Company's position The company categorically denied that it had any obligation to discharge Mr. P. Under the terms of the contract, it argued, this worker had informed the company that he had never been a member of the union and therefore did not have to put himself in good standing.

Mr. P. testified on his own behalf and as a witness for the company. The gist of his testimony was as follows: When he had been asked to sign the application card, he had done so merely in order to help provide the union with enough applications to enable an election to be held. It was never his intention to consider himself a member of the union by the simple act of signing an application card. The organizer who induced him to sign up had assured him, so Mr. P. insisted, that the card did not constitute an actual union membership certificate and if he did not care to join the union after it organized the shop, he could refuse to sign a membership card. He signed the application under pressure with the further understanding that it would thus make it possible for the union to present his card, together with all the others who had signed similar cards, without revealing any of the names, to the company and thus enable the union to prove to the company that it repre-

sented a majority of the employees—or if necessary to get the company to agree to an election to be conducted by the National Labor Relations Board. Were such an election to be held, he maintained, it was not his intention to vote for the union. But the company recognized the union. Not having joined the union, Mr. P. concluded, he was under no necessity to pay any initiation fees or dues in order to retain his job.

The company produced further arguments before the arbitrator. It contended that the union was bound by the statement made by any of its organizers, particularly since the organizer had told Mr. P. he was only signing for the purpose of helping to get a majority to designate a bargaining agent and that he would not be asked to pay anything unless he later elected to take out a union card.

Arbitrator's decision In the judgment of the arbitrator, the signed application card spoke for itself. Any allegation that a union organizer in soliciting memberships had guaranteed a special exemption in this case could not be considered valid, either in law or in practice.

Mr. P. admitted at the arbitration hearing that he had read the contents of the card and, moreover, had never taken any action thereafter to withdraw the card or to resign from the union. All this led the arbitrator to the unmistakable conclusion that Mr. P. had had a change of mind after he had joined the union. As Mr. P. had agreed to accept membership in the union at the time he signed the card, and as he and all other members are bound by the contract provision that members must keep themselves in good standing, the arbitrator ruled that Mr. P. had to put himself in good standing with the union immediately in order to retain his job. Should he fail to do so within the following ten-day period, the company was directed to discharge him.

INSUFFICIENT PROOF OF RESIGNATION FROM UNION UNDER ESCAPE CLAUSE

The steel workers' union (CIO), which represented the employees of a metal fabricating concern, took to arbitration the question as to whether one of the employees, Mr. M., had resigned from membership in the local and accordingly was not obligated to have his dues deducted through the checkoff provided by the contract, or whether he was still a member of the union and thus had to have his dues so deducted.

Here was a case where the company refused to be a direct party to the arbitration proceedings at all. Its representatives insisted that the dispute was one between the employee and the union and it did not wish to take sides in the matter. Nevertheless, under the contract then in effect, there was a clause which read as follows:

If a dispute arises as to whether an employee (1) was a member of the union on the date specified above, or (2) was intimidated or coerced during the 15-day escape period into joining the union, or continuing his membership therein, such dispute may be submitted for determination by an arbitrator to be appointed by the U. S. Conciliation Service, and the issue shall be between the union and the employee, but the company agrees to abide by the decision of the arbitrator.

The same contract contained a clause providing for an irrevocable checkoff for all employees who were members of the union at the end of the 15-day escape period.

The union contended that Mr. M. had paid his initiation fee as a member of the union and had signed a membership application card about two months after the union had been certified by the National Labor Relations Board as the bargaining agent for the maintenance and production employees of the company's plant. Negotiations over the initial contract were protracted and it was some five months later when the contract was concluded. At that time, a joint notice signed by the union and the company, was issued to inform employees that, pursuant to the terms of the contract, the checkoff of dues would be put into effect the same month. Shortly thereafter the union received from the company a memorandum indicating that it had received a signed statement from Mr. M. declaring that he was not a member of the union and requesting that no deduction of union dues be made from his wages. The union insisted that this memorandum was the first and only notice that it had received from any source concerning Mr. M.'s alleged resignation, and that it did not consider the resignation a valid one under the rules of the local.

At the hearing the union representatives testified that their local, prior to ratifying the contract, had adopted a rule requiring any member who desired to resign from membership during the 15-day escape period to write a letter to the regional office of the union, which was located in a city not far from the plant where Mr. M. was employed. No such letter of resignation had been received from Mr. M. by the union.

The union further argued that it had every right to take a "technical" position in the case. It pointed out that in the absence of a written resignation it could not in fairness to itself and to the other members excuse anyone from payment of dues during the period of the current contract. Its spokesmen went on to say that the local had been very liberal during the organization drive in not charging any dues to any of the members and that the members had unanimously resolved that all members be subject to the check-off after the contract was signed.

Position of employee involved Mr. M. testified in his own behalf and was the sole witness to oppose the contentions of the union. He declared that he had attempted to withdraw from the union by tendering his resignation to his shop steward during the escape period. Having been told by the shop steward that he would have to submit his resignation to the regional office in another city, he wrote a letter of resignation at his home on a Sunday morning and mailed it the following morning. He insisted that he had placed the letter, which contained a return address on the envelope, in the letter box in front of the plant where he worked. The letter was never returned to him and accordingly he believed it had been received at the union office.

Arbitrator's decision There was no violation of the contract or of normal union procedure, the arbitrator held, in the action of the union in demanding that members desiring to resign submit their resignations in writing to the regional office of the union. This was indeed a reasonable requirement. Mr. M. was certainly on notice as to his obligation, particularly in view of the fact that he had attempted to resign verbally at first. The arbitrator declared that under these circumstances "it behooved Mr. M. to make sure that the letter of resignation would reach the office of the union, and that he should at least have available proof that he had mailed the letter within the prescribed time for the filing of resignation. The burden of proof that the letter of resignation was mailed was indeed upon Mr. M., in view of the union's positive position that no letter of resignation was received before the expiration date or thereafter."

No such proof, outside Mr. M.'s own testimony, was presented, and the arbitrator ruled that Mr. M. was still a member of the union and that the company could properly deduct his dues as required in the contract.

GOOD STANDING AT TIME OF CONTRACT EXECUTION

The contract entered into by an elevator company with the electrical workers' union (CIO) had a slight modification of the standard maintenance of membership clause. This contract provided that employees who were members "in good standing in accordance with its constitution and bylaws," as well as all employees who might subsequently become members of the union, must maintain their membership in good standing for the duration of the contract.

Three women employed by the company refused to pay union dues or initiation fees. For a period of some three months the union had sought by direct approach to the women to get them to meet their financial obligations. The union had no success. Its officers' first inkling of the unwillingness of the women to make any payments to the union came when they refused to sign voluntary checkoff cards. (The contract contained a provision for a checkoff of union dues upon specific authorization of individual employees.) At the time these employees stated that they did not intend to remain much longer with the company and that was why they did not want their dues deducted.

After failing to get the women to make any payments to the union, its officers requested the management to discharge them for failure to remain in good standing with the union. The company refused on the grounds that in its opinion these women never had become members in good standing and, not having been such at the time of the execution of the contract, were exempt from the maintenance of membership clause.

At the arbitration hearing the company presented affidavits signed by each of the women. The affidavits asserted that they were not members of the union. They admitted having signed an application card while the union was organizing the shop, but insisted they had been told that they were free to join or not join if the union won the election which was about to be conducted. After the election they decided not to become members, and the reason for refusing to sign checkoff cards was that they felt they had never been members and did not owe the union anything.

The company stressed the point that even if by signing application cards they had been accepted into the union membership, they were certainly delinquent on the date of the signing of the contract and certainly were not in good standing on that date within the meaning of the union's constitution and bylaws.

Arbitrator's decision There was no doubt in the arbitrator's mind that these women were fully aware of the fact that they were signing union membership cards. Each of them was of mature age and fully conversant with union activities. Accordingly he ruled that they were members of the union at the time that the contract was entered into, particularly since after signing the membership cards they had taken no pains to advise the union of any change of heart and had never requested any withdrawal or resignation. The arbitrator therefore held that the company was obliged to discharge these women unless they put themselves in good standing with the union. At the same time the arbitrator recommended that the union accept a substantial partial payment from the workers so as not to put an unduly heavy burden on them in the liquidation of their indebtedness to the union.

NONPAYMENT OF DUES TEMPORARILY EXCUSABLE

The wholesale and warehouse employees' union (CIO), which represented the employees of a yarn manufacturing company, brought to arbitration the question as to whether or not Miss M. should be dismissed on account of nonpayment of dues. It also took up the further question of its right to collect damages from the company for each week while Miss M. was allowed to remain at work despite her not being in good standing with the union. The contract then in effect was a union shop contract.

When Miss M. became delinquent in her dues she was notified by the union through a registered letter that unless she paid some \$10 in back dues she would be suspended at the end of the week. If suspension became necessary she would be required to pay a \$10 "restoration charge" in order to remain a member of the union. The company was supplied with a copy of the notice sent to Miss M.

The day after the deadline for her suspension, Miss M. offered to the union a \$5 partial payment. This was refused by the union.

Miss M. testified on her own behalf at the arbitration hearing. She said that she had fallen behind in her dues because of family financial troubles. Her father was unemployed and all her income was needed to keep the household going. Miss M. conceded her obligation to the union and expressed willingness to pay up her dues, although she thought it was unfair to have to pay the \$10 restoration charge in order to be reinstated in the union. The management supported Miss M.'s position.

In the course of the proceedings, both the union and the management introduced much evidence that the arbitrator considered irrelevant. Miss M.'s value to the company, for instance, her length of service, and the alleged dissatisfaction on the part of a number of employees on having to pay union dues, were considered by the arbitrator as having no bearing upon the sole point to be decided. Similarly, the union attempted to demonstrate that the management had encouraged the nonpayment of union dues as a means to weaken and undermine the union's standing in the shop.

Since the question before the arbitrator was simply whether or not Miss M. had complied with the contract requiring her to fulfill completely her financial obligations to the union in order to keep her job, the arbitrator directed that Miss M. immediately should put herself in good standing by paying all dues and assessments which she owed to the union. In the light of the financial plight in which Miss M. had become involved, and the company's keen interest in keeping her on the job, the arbitrator recommended that the management advance to Miss M., if necessary, any of the funds which she owed to the union, this sum to be repaid to the company in suitable installments.

As to the union's claim for damages because of the retention of Miss M. while she was delinquent in her dues, the arbitrator ruled that no damages were payable and that if there was immediate compliance with his decision the firm would be absolved of any charge of violating the contract.

DAMAGES FOR DUES DELINQUENCY DISALLOWED

In another case where an employee was kept on the job after the management had been notified he had fallen out of good standing by reason of nonpayment of dues, the union sought an arbitration award for damages. This union, the wholesale workers (CIO), not only demanded the discharge of the employee who was delinquent in payment of his dues. It also argued that his employer, a jobbing firm, should be required to pay to the union the sum of \$105, representing three weeks' wages for the employee, Mr. M. The union fixed on the amount of three weeks' pay because three weeks had elapsed from the date of notice to the firm of Mr. M.'s delinquency to the date of the arbitration hearing.

The management conceded that it was aware that Mr. M. had been in arrears. On the other hand, it said it had been informed

by his shop steward that arrangements had been made to adjust Mr. M.'s difficulties with the union and thought that the union was not actually pressing for his discharge. The company also pleaded extenuating circumstances. Mr. M., it said, was the sole support of his mother, who was seriously ill, and all of his funds were required to meet household necessities. The union countered that Mr. M. had made arrangements to put himself in good standing but had not kept his promise. Hence the company was obligated to discharge him under the terms of the union shop contract then in existence.

The arbitrator made the following ruling:

The union's request for damages cannot be granted, as there has been no evidence introduced that any actual loss was sustained by any employee by reason of the retention by the firm in employment of Mr. M.

The union did not introduce any evidence that it has suffered any damages, with the exception of the non-payment of dues by the employee in question.

DISPUTED COVERAGE OF BARGAINING UNIT

A dispute that arose between an independent union and a small textile plant demonstrated the urgent importance of getting the question of coverage or noncoverage by union contracts settled at the time the bargaining unit is agreed upon or, at the latest, when the contract is being negotiated. The bargaining unit agreed upon by the parties was defined as follows: "All employees except executives, managers, foremen, permanent section hands and office employees." Eligibility to vote in an election conducted by the National Labor Relations Board was determined on the basis of whether any employee was included or excluded from this unit. There was also a clause in the contract which provided for a union shop.

Eleven of the employees who voted at the election, without challenge on the part of the company, did not become members of the union. The management contended that these eleven workers were all supervisory employees and therefore were excluded from the contract. On the other hand, the union argued that the duties of each of these workers were substantially the same as they were at the time the election was held. They were then considered to be eligible to vote and all did vote at the election.

At the arbitration hearing the union reviewed in considerable detail the nature of the duties performed by each of the employees. Several of them were maintenance men, such as painters, elec-

tricians, or plumbers. Some of these had helpers but were for all practical purposes journeyman mechanics. The rest were machine operators who had some supervisory duties but in the opinion of the union were nothing but lead men or gang bosses.

The company took an entirely different position. It insisted that in the first place no attempt was made by the union in negotiating the contract to inform the management that the union representatives considered these employees to be part of the previously agreed-upon bargaining unit. They had been allowed to vote at the election because the management was not aware that the mere act of voting would make them subject to the terms of whatever agreement was ultimately arrived at. The maintenance employees in particular, the company asserted, were fully responsible for their respective jobs and were in effect supervisors of their own work, as well as planners of the work that was to be done by them. Three of the men whom the union regarded primarily as machine operators did actually direct the work of rank-and-file employees under them, and were actually management representatives.

Arbitrator's decision The arbitrator found it necessary to consider all the particulars involved in the work done by each employee concerned in the dispute. He found that seven of the employees were very clearly mechanics or machine operators with no regularly assigned management duties. The other four in his opinion were either temporarily or permanently acting as second hands and therefore were expressly excluded from the unit.

In issuing his findings and decision, the arbitrator considered it necessary to point out to the company certain misapprehensions and misconceptions regarding the relationships of union members to the management and also regarding the effect of their membership upon the performance of their duties. Here is what he had to say with respect to the status of the maintenance men:

The company was apprehensive lest these workers will be handicapped in the performance of their duties upon their becoming members of the union, holding to the thought that the union will interfere with the management's right to direct the work, and that these workers will be obligated to take orders from the union officials, which may conflict with the company's orders.

Rightfully or wrongfully, there seems to exist in the minds of the company spokesmen the idea that the union's interests are diametrically opposed to the company's interests, and that men, upon joining the union, automatically go over to the "other side of the fence."

Whatever may have been the practice in the past, the union representatives

were very forceful in their statements that they recognize the company's rights to direct the workers and that any exception that may be taken to an order by any individual worker must be presented in the form of a grievance in conformity with the contract provision, but that the order given by the company must first be carried out, recognizing that efficient management can only function through a single director.

Arbitrator is cognizant of the fact that there is still a lack of complete understanding concerning rights, privileges and obligations of both management and union, and that occasionally misunderstandings arise because one side or the other does not fully realize where the rights of one overlap the rights of the other, as provided in the contract, which has been arrived at after collective bargaining.

To improve the relationship of the parties, and to bring about orderly and efficient procedures and conduct, both sides must realize that there is a common interest between management and union, and that the joining of the union does not indicate that the efficiency of the workers and the operation of the plant is not fully as much the duty of the workers as it is the right of the management. This can be achieved much more speedily when the workers are convinced that management is not opposed to the organization of the workers as such. The company can likewise be aided greatly in reaching this attitude when the union impresses upon the workers their responsibility to perform their duties efficiently and to carry out management's orders promptly, and proceed to present grievances as they arise in an orderly manner, and after the orders are carried out.

NO SENIORITY RIGHTS FOR EXCLUDED EMPLOYEES

Unless the contract provides that employees who are transferred to jobs out of the bargaining unit shall receive seniority credit upon retransfer to a job covered by the contract, the company has no right to displace a covered employee by a person who had been holding a job that made him ineligible for union membership. This was the gist of a decision rendered in the case of a machine shop and the electrical and machine workers union (CIO), which had entered into a contract that established seniority as the deciding factor in determining what employees should be laid off when curtailment of operations became necessary.

The seniority provisions of the contract spelled out in detail the specific conditions that would result in loss of seniority. One of these was "leaving job voluntarily." The dispute centered about Mr. M., who had been employed by the company for five years, and whether he was entitled to displace Mr. L., who had been in the company's employ for four years.

It was the union's contention that Mr. M. had lost all seniority privileges when he had accepted a supervisory job the previous

year. In the opinion of their representatives Mr. M., in accepting the promotion, had left his job voluntarily, as far as the contract provision was concerned. The union rested its case entirely on its interpretation of the contract clause.

The company spokesmen asserted that over a long period of years, both before and after it had entered into contracts with the union, the established practice had been to determine seniority of all employees on the basis of their initial hiring dates, regardless of what types of jobs they might have held. Furthermore, the company had invariably followed the practice of promoting rank-and-file employees to supervisory positions. The men themselves had understood that when work became slack they would have the right to go back to their previous jobs. In fact, according to the company, two men had been promoted to foremen's positions while the present contract was in effect and had been returned to their previous manual jobs without any complaint on the part of the union.

The history of the contract negotiations was also reviewed by the company. It pointed out that both parties agreed to limit breaks in seniority to four specified conditions. No provision was included to require loss of seniority by transfer or promotion. In the management's opinion, accepting promotion did not constitute "leaving a job voluntarily."

Arbitrator's decision The reasoning of the arbitrator in deciding this case, as well as the ruling he made, are summarized below:

1. The practice of promoting workers from the ranks and retaining for these workers their seniority in the event they had to return to their former jobs, was evidently not objected to by the union so long as no individual union member was adversely affected thereby.

2. The seniority status of a worker who had never been included in the category of eligibility for union membership would not entitle such worker to be placed on a job now being filled by a union member, although such worker has been continuously employed by the company for a longer period than the union member.

3. The issue therefore narrows down to the question whether a worker who was at one time covered by the contract, and who thereafter was transferred to a position which made him ineligible to union membership, and had held that position for over a year, can claim that he is covered by the "continuous length of service" provided for in the contract between the union and the company.

4. Occasionally workers will deem it desirable to risk the loss of seniority in order to secure a promotion or a transfer to a more attractive job. Workers who choose to take such risks, and who as a result receive benefits, cannot

very well expect to retain seniority against other workers who were not favored in the same manner.

In the instant case, the arbitrator is impelled to rule that the contract provision pertaining to continuous employment appears to cover only such workers who are covered by the union contract. Mr. M. having been outside of the bargaining unit in excess of one year, and having received no special privilege either from the union or by agreement between the union and the company, is not entitled to the job which Mr. L. has occupied while Mr. L. is obliged to accept a layoff.

UNION RIGHT TO CHALLENGE WORK ASSIGNMENTS

The automobile and aviation workers' union (CIO), representing the employees of an aviation equipment company, took to arbitration the question as to whether or not the counting of parts and materials is a job requirement for dispatchers. In nearly all contracts the union has the right to protest the propriety of job assignments, unless the contract vests in management the exclusive right to make such assignments. But a mere protest is not enough. It is incumbent on the union to demonstrate conclusively that a change in work assignments is contrary to the express terms of the agreement, or deviates sharply from past practice where no specific contract clause governs.

In this case the union was unable to present sufficient evidence to support its contention. Its spokesman argued that over a period of some months the company had employed some workers who were known as counters to do the counting of parts. Gradually these jobs were eliminated and the work of the counters was taken over by dispatchers. The main evidence in support of its position was the job description for the position of dispatcher which the company had supplied to the union while counters were still being employed. Nowhere in the job description for dispatcher was there any mention of doing counter work. The union conceded that occasionally the dispatchers had helped the counters but only when they were overcrowded with materials.

The company maintained that dispatchers had always done counting in connection with their other work. The fact that their job description made no mention of counting was immaterial. It is impossible to include in a job description every conceivable assignment that is involved in many types of jobs. The company made the further point that counters had been employed only when there was an unusual volume of work on the second shift, and that as

the volume gradually declined and the second shift was eliminated, there was no valid reason to continue to have separate employees engaged in counting work.

The arbitrator accordingly ruled that the union's protest was without solid foundation and that the company could continue to have the counting work done by its dispatchers.

UNION PROPER JUDGE OF SENIORITY PRIVILEGES

When a dispute arises as to which of two workers has the greater seniority and is therefore entitled to a more desirable job, the union's judgment should prevail if the current contract provides no clear-cut method for deciding the issue. That in effect was the conclusion reached by a board of arbitration in an unusually intricate case involving an employee of a business equipment manufacturing company and the electrical workers' union (CIO).

Contract clauses at issue There were two elaborately written and carefully detailed contract clauses cited in this dispute. The one that the union thought governed the situation was the seniority clause which read as follows:

Seniority shall be defined as length of service. Seniority shall be by job classification first, by departments, then shopwide, where such jobs are available and the affected employee is capable of performing the work. Where no jobs are available in the employee's job classification, either in the employee's department or in other departments in the shop, the affected employee's seniority shall become plantwide for such jobs as are available and he is capable of performing. Employees with greater seniority who are to be transferred shall be given preference to such available jobs whether in their job classification or plantwide.

The company, on the other hand, insisted that the clause setting out management rights should determine the arbitrator's decision. The management rights clause was:

It is the responsibility of the employer to maintain discipline and efficiency in its plant, and the right of the employer to hire, discipline and discharge employees for just cause and transfer and relieve employees from duty because of inefficiency or lack of work is expressly recognized, subject to the right of appeal through the grievance procedure herein. The introduction of time standards and the selection, placement and distribution of personnel are the responsibility of the employer, subject to the terms of this agreement. In addition, the right to plan, direct and control the operations of the plant, to introduce new or improved production methods, to establish production schedules and quality standards are solely and exclusively the responsibility of the employer.

Essential facts and contentions Miss M., the union contended, was entitled to be placed on a newly created job that resulted from the consolidation of three jobs into one. One of the three jobs was merged with others, and since she was capable of performing the newly created job, she was entitled to this job on the basis of her seniority rights.

The union argued that as long as the company did not question Miss M.'s competency to perform the combined job, it should not question the seniority rule as to the eligibility of Miss M. That, the union argued, was a matter for the union to decide for itself and in so doing it would follow the same procedure as applied to any reduction in the work force. In cases of general reduction, the contract required competent workers with the greater seniority to be retained in their department, regardless of the time they had spent on any specific operation in the department.

It was the position of the company that the combination of three operations into one job did not result in creating a new job, and that therefore the seniority clause should not govern. Were that to be the case, it would upset the company's authority under the management rights clause to place and distribute its personnel, and to introduce new or improved methods of operation.

The company stressed the point that another employee who had performed the operation constituting two thirds of the combined job should not be removed therefrom. To do so would infringe upon the company's authority to manage the distribution of its employees.

Arbitration board's decision On originally hearing the case, the board concluded that it would be preferable for the union and the management to try to reach an accord as to the procedure to be followed in instances of this nature. The board was informed, however, that the parties had been unable to agree, hence it had to issue its findings and make a decision to settle the dispute. In discharging its obligations the board took considerable pains in setting out the factors that it thought most pertinent and in explaining the reasons for its conclusions. These are quoted below:

1. Job classifications now in existence in the plant are strictly the company's responsibility and function.
2. The combination of two or more jobs into one, whether considered a new job or not, obviously creates a new classification. This is illustrated in this

instance when two of the component parts of the combined job are brought into the labor group 6 from labor group 7.

3. The combination of the three operations into one caused the displacement of two of the operators, whose work was taken over by the third operator who receives a higher labor rating for about one third of the combination job, obviously making the job a better one than it had been heretofore, at least from a pay angle.

4. Miss M.'s competency to fill the job is unquestioned.

5. Miss M.'s seniority in the department is not questioned.

6. The sole question then is—what constitutes seniority? The length of time in the department or the length of time on the specific operation.

The board, after considering this question very thoroughly, has reached the conclusion that in the absence of any clear-cut understanding to the contrary, and until such time as such understanding is reached through negotiation between the company and the union that the union's judgment in regard to the rule governing seniority, so long as management's rights are not affected, should apply.

It is generally recognized that the union as the bargaining agent for the workers has the greatest interest in protecting the workers' seniority rights, while the company is chiefly interested in the efficiency and competency of the worker who is assigned to perform the work.

Obviously, the union's rules governing seniority must not be unreasonable nor detrimental to the proper operations of the plant.

No evidence was presented in this case that the union's position concerning seniority, as it wishes it applied, was unreasonable or detrimental to the proper conduct of managerial functions.

It therefore seems apparent that the union's wishes in this matter should be regarded and that its rule concerning seniority approved until such time as the company and the union jointly recognize a modification thereof.

The board therefore holds that Miss M. was entitled to be placed on the newly created job.

The board is hopeful that the parties will endeavor to reach a further understanding pertaining to the application of seniority requirements by approaching the problem from the standpoint of recognizing that it is the management's chief interest in the placing of the competent person on the available job and it is the union's chief interest in protecting the individual who is competent, on the basis of the longest employment in the department, so that such person may secure improvement in working conditions or better paying job whenever such opening presents itself.

RIGHT TO ASSESS VARIABLE INITIATION FEES

After the execution of its first contract the ladies' garment workers' union (AFL), representing employees of an undergarment manufacturing company, decided to charge higher initiation fees to new members than the fee charged to persons who had joined the union during its organizational campaign. The contract con-

tained a closed shop provision and therefore all employees were obliged not only to join the union but to pay whatever initiation fee the union considered appropriate.

The company questioned the fairness and propriety of the higher initiation fee. Its management felt that excessive demands made on the workers who had not already joined the union would be construed by them as an act of unfriendliness to them by the union and would create friction that would adversely affect the efficiency of the plant. The company had previously operated a nonunion shop for many years. Now that a closed shop contract had been entered into it wanted to maintain wholesome relations with the union and to make sure that all employees felt favorably disposed toward the union. The union on its part was perfectly willing to have the matter decided by the arbitrator, although no contract clause could be invoked that gave either party the right to arbitrate a dispute of this sort.

The explanation given by the union in the arbitration hearing was that while the plant was being organized an unusually low initiation fee was fixed. All workers were privileged to take advantage of the opportunity to join the union at the low rate and many did. A notice was circulated fixing a date beyond which the special initiation fee would not prevail. Hence all workers were informed of the situation and had a chance to save money by signing up before the deadline for the higher fee.

There were other circumstances which the union admitted had caused it to insist on the higher fees for new members. There were several workers who had been most active in opposing the unionization of the plant and had used questionable tactics in their opposition. The union found it most desirable to charge them higher initiation fees in order that they would understand the purposes of unionization and the policies of the organization with which they must become affiliated if they were to keep their jobs.

Arbitrator's decision The arbitrator sustained the right of the union to levy the higher initiation fee in accordance with the terms of the notice distributed to all the employees while the organization campaign was under way. Because of the undoubted merit of the union's contention that a small group of employees had opposed the organization of the plant through questionable tactics, still higher fees were properly chargeable to these employees. Under the terms of the submission, the arbitrator was authorized himself

to fix special fees for this group. He ruled that four members of the group should pay an additional sum of \$10 beyond the newly established initiation fee and the other employees should pay an additional amount of \$20.

HIGHER INITIATION FEE FOR NONSTRIKERS DISALLOWED

A case similar to the one cited above where another union wished to exact from those employees who had not participated in a strike prior to the signing of a closed shop contract, a higher initiation fee than the fee charged to those who had supported the union. The company involved produced bed springs and the labor organization was the furniture workers' union (CIO).

The company had a potent point to make at the arbitration hearing. Since the strike, its spokesman told the arbitrator, it had been the company's sincere desire to live up to the spirit as well as the letter of the new contract, to cooperate with the union thereafter, and to see to it that all the workers acted in harmony with the union, so that wholesome relationships might prevail all around. But the company strongly felt that any excessive initiation fee charged to workers who did not join the strikers would tend to prolong the memories of past strife, which should be forgotten.

The union's principal argument in support of its wish was that the large group of the workers in the shop, who had sacrificed a great deal by staying out on strike and had won benefits that accrued to all workers alike, including those who had made no sacrifice or contribution at all, should be rewarded for their sacrifices. Likewise, the \$10 initiation fee, instead of the \$5 one charged to the striking members, should be paid cheerfully by those workers who would benefit from the sacrifice that had been made by the others. It was not that it wished to be vindictive or revengeful against the nonstrikers, the union further pointed out. It just did not want the nonstrikers to harbor the thought that they had "gotten away with something."

The arbitrator felt that the nonstrikers, regardless of their not having participated in the strike, should be accepted into membership in the union and be charged the \$5 initiation fee, the same as all the others were charged. In the arbitrator's mind, there really was not much of a disagreement between the parties. The union did not seek to impose any penalty on these nonstriking workers. The company was equally anxious with the union that these work-

ers should henceforth prove faithful union members. It therefore seemed clear to the arbitrator, and he so told the parties, that now that all was forgiven since the settlement of the strike, no animosity should be allowed to remain in anybody's mind, which there certainly would have been if the nonstrikers had had to pay a double initiation fee.

ADEQUATE UNION REPRESENTATION IN GRIEVANCE MATTERS

The management of a brick manufacturing company had refused to meet with the grievance committee of the brick and clay workers' union (AFL), unless all members of the committee were present. There was no contract clause specifying how many members of the committee had to be in attendance at a grievance meeting. But the company felt that grievances were being improperly handled and satisfactory settlements delayed because of the continued absences of some of the committeemen. The union insisted that there were even worse delays in settling grievances when the company was adamant in refusing to hold a meeting unless all members were present, and that usually there were valid reasons for the absence of some committeemen.

In this case the arbitrator proposed a solution which would involve selection of alternates for committee members. Both parties agreed to this. The arbitrator then went on to rule that when a grievance did not directly affect the department represented by an absentee committeeman, the company and the union should proceed to hold meetings without full attendance of the committee.

BULLETIN BOARD RIGHTS

Many union contracts deal specifically with the use of company bulletin boards by unions. The contracts ordinarily set forth the conditions under which the bulletin boards may be used and some go so far as to state in detail the types of union notices that can be posted.

There was no clause relating to bulletin boards in the agreement entered into by a building materials firm with the brick workers' union (AFL). Nevertheless the union, after the contract was in effect, requested the company to permit its officials to post notices on the plant bulletin boards. In support of its request, the union pointed out that it was general practice throughout industry for management to provide bulletin board space for union notices that

were necessary to keep the union members fully informed on the current activities of their local.

The company declined to accede to the union's request and took the position that it had no obligation under the contract to do what the union sought. The management was, however, entirely willing to have the matter go to arbitration.

Noting the absence of an applicable contract clause, the arbitrator ruled that he was not empowered under the terms of the contract to order the company to yield to the union's request for bulletin board privileges.

SCHEDULING WORK ON SENIORITY BASIS

The chemical workers' union (AFL) representing the employees of a paper company protested the action of the management in failing to schedule one of its senior employees to work on a given day when an employee with less seniority was called in on that day.

The facts in the case were not in dispute. On a particular Saturday, there was special work to be done for a crew of eight employees. Under the current contract this work was to be assigned on the basis of the employees' seniority. Seven of the eight workers called in had the requisite seniority to entitle them to be called in for the extra work. The eighth, Miss D., was a junior. Two employees having greater seniority, Miss N. and Miss F., each insisted that she was entitled to be called in for the special Saturday work.

The union urged that both Miss N. and Miss F. be given a day's pay because they had been deprived of the privilege of the extra Saturday assignment. It did not deny the fact that work was available for only eight employees. It argued however that since the company had not adhered to the seniority list in accordance with the contract, a penalty should be imposed upon the management equivalent to a day's pay for each of the two aggrieved workers. Such a penalty, the union argued, would serve to impress upon the foremen of all departments in the mill their obligation faithfully to adhere to the seniority clause of the contract.

The company conceded that the junior employee, Miss D., was called in for work inadvertently and that another qualified worker with greater seniority should have been given the work on the Saturday in question. Because of the error, the company agreed to provide a day's pay to the worker who was higher on the seniority

list. The company insisted, however, that it had no obligation to pay anything to the other employee who was next in line, because even if a mistake had not been made, this second worker would not have been entitled to work on that day.

Arbitrator's decision In the light of all the facts in the case, the arbitrator concluded that there was only one worker with a bona fide grievance. That was the one whose seniority would have entitled her to be the eighth person to be called in for the Saturday work. He therefore decided that in offering to pay the first worker the sum she would have earned had she been called in to work on that day, the company had fulfilled its obligation and could not be required to pay any money to the worker for whom no work would have been available on that day under any circumstances.

6. DISCHARGE AND OTHER DISCIPLINARY CASES

Facts and facts alone almost invariably provide the basis for arbitrators' decisions in discharge cases, as well as in all other types of cases involving disciplinary action by management. To be sure, a contract may enumerate specific causes for discharge or layoff. The contract even may specify penalties for various types of offenses. And yet it is always incumbent upon the arbitrator to decide whether the individuals affected have actually been guilty of the offenses charged. Then too, where the contract is worded more broadly, and authorizes management to take disciplinary action for just cause without specifying what constitute offenses or the nature of the penalty, the arbitrator still has to decide whether or not any disciplinary action is warranted.

Management, in determining whether or not to discipline a worker where the right of discipline is subject to arbitration, and the union, in deciding whether or not to protest the management's action, invariably have to base their decisions on "educated guesses" as to what an arbitrator might decide if the case were brought before him. Arbitrators do not possess supernatural qualifications. They have to use good judgment and common sense. What is reasonable under the circumstances? What is the fair thing to do? What is conducive to good management-labor relations? Should justice be tempered with mercy? These and many other questions invariably come to mind when the arbitrator has to rule on disciplinary matters. Given the same set of facts, it is to be presumed that any competent arbitrator would reach the same decision. To repeat: the facts and the facts alone should and do control the arbitrator's decisions in all such cases.

WHAT IS "CAUSE" FOR DISCHARGE?

A contract clause that has become so commonplace as to be nearly standard is the one that prevents management from discharg-

ing employees except for "cause" or "just cause." Usually, a companion clause permits submission to arbitration of any unsettled dispute involving discharge cases.

These two companion clauses were contained in a contract involving the automobile workers' union (CIO) and a battery manufacturing company. Two separate disputes over alleged improper discharges came up for arbitration.

The first case involved six employees who, prior to the reconversion period following World War II, had been paid on a piece-work basis. When civilian work was resumed, many production difficulties were encountered. Some of these arose because of the poor condition of the machinery that had not been used for war production purposes and had just been restored to operation. In any event, whether it was wholly attributable to machinery or lack of effort on the part of the employees, the workers' earnings dropped considerably. The management complained about the lack of sufficient output and informed the workers that if they did not exert reasonable effort, they would be paid merely the down-time rate applicable to their jobs. On receiving this notice, the workers, who were all women, became emotionally upset. Their disturbed condition was intensified when the management assigned a checker to watch their activities and to record their production constantly.

Matters reached a stage when the women became so excited that they left their work and retired to the rest room for a short period. Their foreman told their union representative that if these women did not want to get back on the job immediately they had better go home. On being so informed by the union representative, the women went home for the day. As recounted to the arbitrator, they considered it desirable to take a day off and regain their composure, fully intending to return to work the next morning. The next day when they appeared at the plant they were informed they were discharged.

The union took the position that in the past whenever a woman employee felt indisposed she was permitted to go home and resume her duties the following day. There was sufficient provocation, the union spokesman argued, for the nervous condition of these employees to warrant their deciding to go home for the day. They believed that by the following day matters would be adjusted so they could resume their operations in the proper manner.

The company maintained that these employees had acted collu-

sively in an attempt to disregard proper shop procedure and discipline. Their refusal to proceed with their work was tantamount to a strike in violation of the existing agreement, which provided that there would be no strike while any dispute was pending in the grievance procedure. These women had quit their work in violation of the agreement and they had furthermore disobeyed orders to stay on their jobs.

The arbitrator held that the discharge of these women was unjustified and contrary to the terms of the contract. He pointed out that in singling them out for the harshest possible penalty, the management had entirely disregarded the fact that they had been subjected to a substantial decline in their earnings and therefore were justly exercised over the apparent loss of the rights they had received under their contract. The arbitrator was impressed with the fact that in this case the workers were both agitated and impatient but they did not leave their jobs with any intent of striking or staying away from the plant for an extended period, nor did they urge others to do likewise. It appeared to the arbitrator that the management was motivated by the desire to take disciplinary action in order to impress these and other workers that they should refrain from complaints and agitation. He ruled that it was not a "just cause" to discharge employees for a first offense of this nature, instead of imposing a less drastic form of discipline. The terms of the submission to the arbitrator precluded him from awarding a lesser penalty than discharge, although he intimated that the employees' action might have been considered a just cause for some type of punishment.

The second issue presented to the arbitrator in the same proceedings involved the union's contention that a repairman had been improperly discharged. This employee, Mr. B., had been called into the office of the general manager and informed that a machine on which he had worked was found defective. As all the repairmen, including Mr. B., had been previously warned not to do defective repair work, Mr. B. was discharged on the spot. The union asserted that Mr. B. had been directed to repair only one part of the machine, and that he should not have been held responsible for the other part that was found defective.

The management had a clear-cut case. They pointed out that there had been a great deal of trouble with the quality of the work and drastic action had to be taken to impress upon all repairmen

the necessity for more efficient performance. All of them had been warned, and as a further corrective step, they were required to put their initials on the machines they were directed to repair. Thereafter the work of most of the men greatly improved. Mr. B., however, still was passing work which was faulty or improperly done.

The failure of Mr. B. to repair both parts of the machine was the last straw and the management could no longer tolerate his careless work. He had been directed to repair the machine in question to the full extent that adjustments were necessary. He had repaired only one portion and neglected to repair the other. It happened that this machine was chosen for a test check before a group of repaired machines was shipped out, and in the course of this check, his faulty work was discovered. The management insisted that it was necessary to protect the company's reputation against further criticisms, as well as the loss of patronage, by removing Mr. B. from its employ.

The company's straightforward testimony convinced the arbitrator of its truthfulness. Finding that Mr. B. had been amply warned and had apparently failed to heed that warning, but had proceeded to do a careless and faulty piece of work, the arbitrator held that his discharge was justified under the contract.

INCONCLUSIVE EVIDENCE TO SUPPORT DISCHARGE

All arbitrators are aware that outright discharge is the most severe penalty that can be imposed on any employee. It is not only the fact of loss of a livelihood that makes the penalty so harsh. Like everyone else, an arbitrator knows that applicants for new jobs have to disclose to their prospective employers the reason for leaving their latest connection. When the reason is discharge for cause, any applicant is seriously handicapped in obtaining a suitable new position. That is why every arbitrator insists that there be proof as to the guilt of an employee when he is charged with an offense which might justify his dismissal.

A case in which the facts were seriously in dispute arose between the retail workers' union (CIO) and a department store which had discharged one of its elevator operators. This operator had had an impeccable work record for a two-year period before he entered the armed forces and again after his reinstatement to his job upon his return from the war.

Disputed facts On the day of his discharge he was operating his

elevator as usual, and according to the story presented by the union, had not been aware of any untoward incidents. Late in the morning he was called into the office of the store superintendent. The superintendent asked him if he had struck any employee while he was operating his elevator. He stated that he did not recall having hit or pushed anyone. He was informed, however, that several employees had seen him push Miss D. in the stomach and shove her out of the elevator as she was trying to enter it. He had no recollection of any such incident.

The union spokesman advanced a highly convincing explanation as to what might have gotten the employee into his predicament. Miss D. attempted to get into the elevator at a time when most of the employees were rushing to get to their work places. The elevators were always crowded at this time. Pushing and shoving were commonplace. It was possible that Miss D. had been pushed by some of the employees who were directly behind her, and had accidentally pressed against the operator's arm as he was shutting the elevator gate in front of her.

The union further maintained that by reason of the operator's height, and his position in the elevator, it was not physically possible for him to do what he was charged to have done. The more likely explanation was that Miss D. was pushed against the door while the operator was closing it.

The contract clause invoked by the union was the usual one preventing discharge except for just cause and authorizing arbitration proceedings in the event of a dispute. In the light of the conflict of testimony, the arbitrator was convinced that the most that the operator could be accused of was that he had been indiscreet in abruptly refusing Miss D. admittance to his elevator. It was conceded by everyone that the car must have been full, if not excessively crowded. The arbitrator was not persuaded that the operator had accidentally or deliberately committed an act of violence against Miss D., or had willfully evicted her from the elevator by use of physical violence. Consequently the arbitrator ruled that the discharge of the operator was not warranted and that he should be reinstated to his former job with adequate compensation for his loss of earnings.

In his role in this case the arbitrator was acting as any judge or jury would act. To convict a man of any crime, the evidence must show that the guilt had been proved. There was plenty of doubt

as to the operator's guilt. Since no conclusive and unchallenged proof was presented, the arbitrator's duty was plain. He performed that duty.

DISCHARGE FOR FIGHTING SUSTAINED

Traditionally throughout American industry, fighting on the premises is regarded as a proper cause of immediate discharge. Sometimes, this offense is listed in the contract itself, and at other times, in shop rules. More often it is just assumed that anybody taking a poke at anyone else will be let go. But as the saying goes, it takes two to make a fight. What about the innocent victim, if there was an innocent victim? Or did the person who was struck first and retaliated in self-defense provoke the brawl? Questions of this sort invariably arise when discharges for fighting go to arbitration.

A man and a woman employed by a box manufacturing company were both discharged for engaging in an altercation. Their discharge was protested by their union, an independent organization, on the grounds that the fight was provoked by specific action on the part of the company.

The facts were undisputed. On the morning of the fight, the company had notified the union shop committee that there would be a layoff of several workers that morning, instead of twenty-four hours thereafter, as the contract required. On being informed of the circumstances, the union agreed to the immediate layoff. Nevertheless, most of the workers felt aggrieved.

One Mrs. N. took it upon herself to criticize Mr. E., a member of the shop committee, for agreeing to the layoff. Harsh words followed. Mrs. N. took offense at certain remarks of Mr. E., claiming that he had called her a bad name, whereupon she slapped him and he slapped back. Mr. E. denied he had called her any name at all, but admitted that he had slapped her after she had taken a mild poke at him.

A further point made by the company was that there had been a personal feud between Mrs. N. and Mr. E. and that neither had spoken to the other for a year and a half up to the day the altercation occurred. The company insisted that the fighting was inexcusable and that the discharge of these workers was essential to preserve discipline and maintain efficiency. It further pointed out that the contract provided for the discharge of an employee for just

cause, including "misconduct." Certainly the fight between Mrs. N. and Mr. E. constituted misconduct on the part of both.

Arbitrator's decision The arbitrator ruled that the company had acted entirely within its rights in discharging these workers. They alone were responsible for their act, and the company could not properly be charged with having provoked the fight between them.

In the light of collateral information introduced at the hearing, the arbitrator decided to make recommendations as to the future status of these two employees. He suggested that in view of the excellent record maintained by Mrs. N. during her eight years of service, and in view of the fact that this was her first serious case of misconduct, the company at some early date should reemploy her for a 60-day probationary period. In the case of Mr. E., however, it was disclosed at the hearing that he once before had been discharged on account of a fight and had been reinstated when a federal conciliator intervened. Hence the arbitrator made no recommendation concerning his reemployment.

In this case the question presented to the arbitrator involved merely the justifiability of their discharge. Having found the discharges were proper, it was not within his province to order the reemployment of either of them. His recommendation regarding the possible reemployment of Mrs. N. was made solely in the interest of humanity and good labor relations.

DISCHARGE MODIFIED TO LAYOFF

It often happens that an arbitrator will conclude that an employee has been improperly discharged but still is guilty of an offense justifying a lesser punishment. Some contracts are so worded as to make it mandatory for the arbitrator merely to sustain or reverse the company's action. On the other hand, there are contracts which permit him to decide whether there is any guilt on the part of the accused employee and what the nature of the penalty shall be.

This was the situation in the case of an employee of a yarn manufacturing company who was discharged for insubordination and threatening physical violence against the plant personnel director. He was a member of the woolen workers' union (AFL). The discharged employee, Mr. L., had been approached by the personnel director, who was new in the company, simply because the latter

felt that it was his duty to become acquainted with all the workers. On the day of the discharge the personnel director had discussed with Mr. L., among others, the desirability of changing the work assignments of his department. Everyone else approved of the idea except Mr. L. He keenly resented the proposal and argued at great length with the personnel director. Thereafter, Mr. L. went to the plant superintendent and informed him that if the personnel director did not keep away from him, he would "kick his teeth out." This Mr. L. did not deny. Upon a review of his tactics and conduct by the superintendent he emphatically said that he did not want the personnel director to come near him again. At that point the superintendent fired him.

In his own defense Mr. L. denied that he had meant to use any physical force against the personnel director. He had merely meant to show his resentment and in an excited state wanted to let everyone know his feelings toward that official.

Arbitrator's decision As in many other cases, the tone of the arbitration proceedings, the side remarks between the principals and the witnesses, and the general atmosphere, threw much light on the relations between the management and the union. It became quite evident to the arbitrator that a spirit of mutual good will such as exists in plants where union and management have learned to live together was quite lacking in this particular plant. It happened that the discharge of Mr. L. occurred shortly after the first contract had been negotiated and it seemed to the arbitrator that both the management and the union had much to learn about getting along together.

The arbitrator's decision changing Mr. L.'s discharge to a layoff included the following observations:

Strict military discipline, as was suggested by one management representative as being necessary to operate the plant, is not conducive in the arbitrator's opinion to the promotion of cordial and wholesome relationships in industry, and management can benefit greatly if workers and their accredited representatives are convinced that efficiency and human consideration jointly constitute the policy under which the company operates.

Arbitrator, after giving very careful consideration to all that was said and implied, is convinced that this experience might serve to help both the company and the union to understand that their joint interests call for both proper shop discipline and wholesome regards for the rights of the workers as expressed in the language and intent of the contract.

It is quite possible that Mr. L. was not fully aware of his duty to cooperate

by abstaining from the use of threatening expressions and a warning and a good lecture would most likely have had the proper effect.

Summary dismissal for this first offense is too harsh a punishment in the opinion of the arbitrator:

Arbitrator directs that Mr. L. be reinstated on probation for a ninety-day period and abstain from any activity outside his job during the period. If he has deported himself properly, he is to then receive his full seniority rights.

He is not to receive any pay for the time he was out.

SENIORITY RESTORED

It is not uncommon for an arbitrator to be called upon to determine whether there has been full compliance with an award that he has previously made. In the case of Mr. L. just summarized above, this became necessary when the union contended that the company had refused to carry out completely the arbitrator's award.

The union contended that despite the fact that Mr. L.'s conduct after reinstatement had been entirely without fault, he had been deprived of full seniority rights, which the arbitrator had directed. The company denied any violation of the arbitrator's decision. It had offered Mr. L. work when it was available, first on his regular job (although not on his old post), and then on other assignments. He would not go to work the first day because he insisted on going back to his own old post. When he ultimately accepted work on another post, he was not cooperative. He absented himself on several occasions, explaining that he had to do his haying. At other times he refused to accept work offered to him. Altogether the company maintained he did not deport himself in an exemplary manner after his reinstatement. This, in the view of the management, made it unnecessary to restore Mr. L.'s seniority rights as specified in the arbitrator's award.

To the company's contentions the union had convincing counter-arguments. The original decision of the arbitrator obviously called for Mr. L. to be put back on his old job. Instead, he was offered different assignments of the same general nature, but not at his regular work place. Moreover, the company did not give Mr. L. steady employment but merely offered him work when other employees were absent, and sometimes he was put on jobs at a lower rate of pay. The absences to which the company had referred were unavoidable and similar absences by other workers had not been considered by the company to involve "improper deportment."

Arbitrator's decision Again the arbitrator considered it desir-

able to suggest a different type of attitude on the part of management. He made the following comments, among others:

. . . It is commonly recognized that when a discharged worker is reinstated on probation, worker is afforded every opportunity to ascertain that he is not to be harassed, and with reinstatement, unless specifically provided otherwise, goes the return to the job formerly filled by such worker.

The company not only did not graciously replace this employee to his old job, which in this instance meant his old post, but it furthermore insisted that 90 days' employment meant work on any 90 calendar days the company saw fit to call this man to work. It was only after its own counsel advised that such interpretation was improper, that the company changed its position.

Arbitrator therefore cannot be fully impressed with the company's position that Mr. L.'s department should have been "exemplary" by accepting any work offered, at any rate offered, and that Mr. L. is to be judged more severely than all other workers because he absented himself on some few occasions to do a little haying.

Arbitrator in his decision stated that Mr. L. was to be reinstated, on probation, for a ninety-day period. . . . "If he has deported himself properly, he is to then *receive* his full seniority rights." The arbitrator did not intend that the word *receive* should be construed to mean *restored* and then the meaning should imply that in the interim of the 90 days' probationary period the *worker should* be classified as a casual or peak force worker and receive only "the crumbs" of the available work. Only those with little experience in modern labor relations would permit themselves to read into the arbitration award such meaning as was attempted in this case.

The arbitrator then ruled that Mr. L. was entitled to his own job upon being reinstated on probation, and that he was entitled to retain full seniority as if he had never been discharged. Because of undue delay on the part of the union in bringing the second dispute to arbitration, the arbitrator ruled that Mr. L. should be compensated for time lost on account of his irregular work assignments by the company, only from the date when the union requested the company to take the dispute to arbitration.

LAYOFF FOR FAULTY WORK NOT JUSTIFIED

A group of weavers in a cotton mill were laid off for alleged faulty workmanship. Their union, the textile workers (CIO), took the position that the real causes of the defective output were lack of supervision, mechanical difficulties, and unsuitable materials. It disputed the layoff and sought back pay for the time lost by the entire group.

Contract clause in question The current contract had a pro-

vision declaring that "the right to regulate the quality and quantity of production and also the maintenance of discipline are the responsibility of the management." Relying on this clause, the management insisted that it was properly authorized to take whatever remedial action it considered necessary.

Up to a few years ago, the management pointed out, the practice of the mill was to "dock" weavers when the quality of their output was substandard. When docking was abolished, the management still found it necessary to impress upon the weavers the importance of maintaining a proper standard of output. The weavers who were laid off had failed to flag their looms—i.e., report improper operating conditions. And it was their further duty to stop their looms altogether when "seconds" were being produced.

In rebuttal the union pointed out that at the time the weavers were laid off they were merely told their looms were making bad cloth because of mechanical trouble. When one of the weavers attempted to explain to the management the poor material which was causing some of the defects, no attention was paid to him. When they were put back on their jobs several days later, mechanical defects still existed and a considerable volume of repairs had to be made before first-grade cloth was again produced.

Arbitrator's decision On examination of all the evidence introduced at the hearing, the arbitrator was at once convinced that the company had not produced conclusive testimony which would make it apparent that the production of defective cloth was due to the laxity of the operators. He therefore held that the layoff and consequent loss of earnings were not for a proper cause, as provided in the contract. Hence he ruled that the weavers were entitled to receive full pay for the period of their layoff.

In explanation of his finding and award, the arbitrator pointed out: (1) He was not ruling in regard to the weavers' duties or responsibilities in connection with their weaving job; (2) He was not ruling in regard to the company's right to discipline weavers or other workers for cause, as these were clearly outlined in the contract; (3) He was merely finding that after considering all the circumstances as brought out at the arbitration hearing, the weavers' layoff was not for cause, since the faulty output about which the company complained was primarily attributable to conditions within the control of management itself and not the weavers.

DISCHARGE FOR MISCONDUCT SUSTAINED

The management of a meat packing company had entered into a contract under which the packinghouse workers' union (CIO) agreed that the management would have the right to discharge employees for the following causes: incompetence, misconduct, insubordination in the performance of work, breach of reasonable rules which were established and posted by the employer, soldiering on the job, and slowing down on the job.

When the management discharged Mr. D., it felt it had ample grounds for its action, particularly since the man had been warned about numerous transgressions. Still, as in all discharge cases, the burden of proof was on the company. That is to say, it had to prove to the satisfaction of the arbitrator that the employee was actually guilty of the offenses charged.

Facts as related by the company The straw that broke the proverbial camel's back was an incident on March 7, 1945. Early in the afternoon Mr. D. told his foreman that his mother had telephoned him stating that his father was ill and that he should go to his father's work place and bring him home. The foreman expressed some skepticism. Mr. D. assured the foreman that he was telling the truth and told the foreman he could check the story at the office of his father's employer and he would find that his father actually was ill. The foreman then proceeded to have the checkup made. It was ascertained through the father's employer that he had not been ill on that day but had been at work all the time, and the father had not even called his wife during the entire day. It was further learned that four days earlier his father had worked the entire day, although on that day also Mr. D. was absent with the excuse that he had had to take care of his sick father the entire day.

But the company did not rely alone on these two incidents. In January, 1945, while Mr. D. was acting as shop steward, the management had discussed the problem of absenteeism in general and his own record in particular. He was made to realize the seriousness of the situation, toward which he himself had contributed. At that time he gave assurance that he would urge others to report regularly and steadily and he too would maintain steady attendance.

Despite this assurance, Mr. D.'s attendance record continued to be irregular. The management presented evidence at the hearing as follows: January 20, 1945, absent one hour; January 25, one-half

hour late; January 26, left at 9 A.M. and did not return that day; Jan. 31, absent the entire day; February 10, two hours late; February 12, one-half hour late and also left at noon and did not return; Feb. 16, one-quarter hour late; Feb. 21, left at 2 P.M. and did not return; Feb. 28, out two hours; March 1, left at 10 A.M. and did not return; March 2, did not report until 1 P.M. and left at 4:30 P.M.; March 3, absent entire day; March 5, absent entire day. The company rested its case on this entire record.

Union's claim The union had an explanation for the final incident of March 7. Mr. D. had received a call from his mother telling him to bring his father home. Shortly after she had received the message from the father, another message came from him to the effect that he felt better and was going to try to stick it out. Mr. D. stopped at his home en route to his father's shop and was then told by his mother that it was unnecessary for him to bring his father home as he felt better. He then decided to remain home and help his mother with errands, etc. The union made the further point that the company had been "picking on" Mr. D. for various reasons, prominent among them being the fact that he had served for three years as a shop steward and had been very active in union affairs.

Finally, after hearing the evidence presented by the company, the union took the position that Mr. D.'s absence on March 7 and the "story" he told in connection with it did not constitute an offense of such magnitude as to justify outright discharge.

Arbitrator's decision There was no doubt in the arbitrator's mind as to the proper outcome of this case. He ruled that the company had acted entirely within its rights and in accordance with the terms of the contract in dismissing Mr. D. He further stated:

Any finding by the arbitrator which would direct his reinstatement with or without loss of pay, would tend to deprive the company of its unquestioned right to maintain reasonable discipline in the operation of its business, and would most likely encourage further infractions by others of the reasonable requirements to attend to duties steadily and regularly.

NO SPECIAL IMMUNITY FOR SHOP STEWARDS

Because of the tendency on the part of some management people, usually those in the lower supervisory ranks, to resent what they regard as unwarranted interference in their jobs by the union representatives, cases involving disciplinary action against a shop

steward are usually taken up most vigorously by the union. They frequently suspect a hidden motive, and sometimes with good reason.

The facts in the discharge of a shop steward employed by a rubber manufacturing company did not, however, disclose any basis for the union's contention that the shop steward had been treated too harshly. The union involved was the rubber workers' union (CIO). This man, Mr. G., who had been employed as an oiler for a three-year period, was discharged for neglect of duty and for disobeying instructions. The month before his discharge, he had been provided with a schedule of instructions setting out types of machinery which he was expected to oil. He neglected to follow these instructions diligently and submitted reports indicating that he had oiled machines which he had not actually done. Just before his discharge, an important bearing had run dry due to lack of oil, causing damage for temporary repairs alone for \$125. This damage occurred because of Mr. G.'s failure to follow his instructions and oil the bearing at the prescribed time.

In further support of its action, the company pointed out that Mr. G. had previously been suspended for insubordination and taking credit on his time sheet for work he did not perform. He was reinstated at that time, upon promising to do better in the future. Despite the promise, he continued to be uncooperative and frequently refused to follow instructions.

The union argued that Mr. G. had followed instructions to the best of his ability and that there had been a great deal of misunderstanding between him and his immediate supervisor because of a personal feud that had existed for some time. This feud had no relation to his work performance.

Mr. G. himself admitted at the hearing that he had disobeyed one order given him by his supervisor. He said that he had done so because he felt that by following the order he would damage some of the machinery. He denied that he had neglected to oil any equipment and insisted that the bad bearing which had burned out had been oiled at the proper time.

The union representatives did not deny that some disciplinary action was warranted. They conceded Mr. G. might have been indiscreet on one or two occasions. But they argued that the workers generally would misconstrue the company's action in discharging Mr. G. and would assume that his activity as a union steward

was the main cause for his dismissal. In keeping with the express avowal by the management to pursue a policy of wholesome and friendly relationships with the union and all of the employees, the union spokesman urged the arbitrator to award a lesser penalty than discharge.

Arbitrator's decision The arbitrator ruled that Mr. G. had been discharged for just cause. He accompanied his ruling with an explanation of the reasons for his decision, and some wholesome advice to all concerned. He said in part:

Arbitrator is of the opinion that Mr. G. contributed a great deal towards the misunderstanding which prevailed between his immediate supervisor and other executives who came in contact with him, without his fully realizing that he was doing so. It is unfortunate that his way of expressing himself, and possibly also his idea of what constituted his full duties, had a great deal to do with the conclusion by his superiors that he was not a suitable worker to be retained on the job, and that serious results would follow if his type of performance was allowed to continue.

To this extent the arbitrator is of the opinion that the management had exercised its usual and fully recognized rights to dispense with the services of this worker, the cause being not only the specific instances cited of insubordination, but because of his general attitude in regard to following orders.

There is to be considered, however, the fact that for an extended period this worker had performed his work satisfactorily and could undoubtedly do so again if he became fully aware that there was no basis for the suspicion that he entertained that he was being hounded, and that some representatives of management were persecuting him.

In the arbitrator's opinion it is indeed to the company's interest to eliminate any thought that may develop in the minds of its employees that some of its supervisors deal unfairly with their workers. It is likewise to the union's interest to have all the workers realize that they must perform their duties properly and that they must carry out all instructions cheerfully, and whenever grievances concerning instructions by their supervisors do arise, that these must be handled through the regular grievance procedure. The disposition of this situation, therefore, must be made so that there will be no misunderstanding either on the worker's part, nor on the part of the other union members, that re-employment of this discharged worker implies that the disregard of duties or the following of orders can be tolerated, and likewise that the giving of another opportunity to this worker to prove that he can perform his duties properly, denotes that the management in this case was not fully sustained.

INSUFFICIENT BASIS FOR DISCHARGING UNION COMMITTEEMAN

In addition to the usual clause permitting discharge for cause, the contract negotiated between a sheet metal working plant and the machinists' union (independent) had the following provision:

In view of the union duties of the shop steward and recognized shop committee, the company agrees that the shop steward and/or committeeman shall in no event be laid off (or discharged without good and sufficient cause) while the plant is in operation on production work during regular hours.

The company discharged a shop committeeman for low productivity, believing that he had deliberately limited his output to the great detriment of the company's interest. This employee, Mr. F., had been warned of his unsatisfactory performance and the management had complained to the shop steward and the union business representative, but no improvement had resulted. More than a year before his election to the shop committee, and after being promoted to a better position, Mr. F. had been found several times to be absent from his post of duty and to be engaged in idle conversation with other workers. He had been warned about these actions several times. It was only because of the then current shortage of labor and because Mr. F. had promised to improve his conduct, that the company had not discharged him the previous year. Hence the company concluded that his past record, which was not completely satisfactory, plus his decidedly bad performance after becoming a committeeman, thoroughly justified Mr. F.'s removal from its employ. Indeed, the management insisted that the only possible basis for the union's protesting the discharge was his official position in the union, for the union had "gone along" with the company in several similar cases that resulted in the discharge of employees for unsatisfactory work performance.

The union felt there were extenuating circumstances. It conceded that Mr. F. had left his post a number of times to take up union matters with the shop steward. When the company complained and announced its decision to discharge Mr. F., the union agreed to relieve him of his union duties. Nevertheless, the company insisted that he had not been performing his work properly and took too much time to do a given assignment. In other words, it fired Mr. F. despite the union's willingness to correct the situation that caused the interruptions of his work.

The union had another significant point to make. Its spokesman admitted there had been some general complaints about Mr. F. But these had been due mainly to his aggressiveness in seeking promotion and increased pay, and his discharge was motivated because of his attitude rather than because of alleged poor performance as a worker.

Arbitrator's decision The arbitrator was impressed with the attitude of the union officials in offering to cooperate with the company by withdrawing Mr. F. from his union duties. This, he pointed out, would remove any possibility of the company's belief that he was spending excessive time on union affairs during working hours. He was also impressed with the truthfulness of the union's testimony that a major fault found with Mr. F. by the company was his overanxiousness and aggressiveness in attempting to speed his own advancement. This attitude, he stated, was ordinarily commendable if it was not carried to an extreme. On the other hand, he recognized the soundness of the company's point of view in that Mr. F.'s overanxiousness to increase his earnings caused him to become dissatisfied and brought about his unwillingness to maintain proper productivity.

The arbitrator concluded that the weight of the evidence pointed to the need for some disciplinary action against Mr. F. He had to be made to realize that he should perform his current job efficiently and satisfactorily in order to deserve being retained on it, as well as to qualify for further advancement. Consequently the arbitrator ruled that Mr. F. should immediately be reinstated to his job, but considered as a probationary employee for sixty days. No pay was awarded to him for the two-month period between the date of his discharge and the time of the arbitration hearing. The loss of pay, the arbitrator held, was sufficient penalty for his unsatisfactory attitude and performance.

REFUSAL TO WORK SCHEDULED HOURS HELD INSUBORDINATION

As was demonstrated in Chapter IV, management has the unquestionable right to determine or to change working schedules unless otherwise specified in the contract. And it is the obligation of the individual employees to conform to the work schedule and not to remain away from their jobs either concertedly or as individuals except with permission or for unavoidable cause. There remains the question as to what is a proper penalty for employees who deliberately ignore their job requirements in this respect.

A question of this sort arose in a textile mill when six employees were discharged for failing to report on a Saturday when they had been regularly scheduled to work.

The dismissal of all of these workers took place when they reported for duty the Monday following their absence on a Saturday.

The employees themselves were given no explanation as to the reason for their dismissal. When their union, the woolen workers' union (AFL), questioned the management it was informed that these workers had been dismissed for their insubordination in collusively failing to report for work the previous Saturday and in the judgment of the management their absence from work that day was the result of a concerted effort on the part of the group to take action contrary to the orders and requirements of the company.

The company's case can be briefly stated. The particular department in which these employees worked had been on a six-day schedule for about three years and ordinarily all the department employees were required to work on Saturday. It was the management's practice, however, to notify employees when they were being paid on Friday whether or not they would be required to report for work the following day. The Saturday previous to the day when all six did not show up, four of the workers had stayed away without permission. One was excused from attendance and one worked. The result was the creation of a bottleneck in production that seriously affected the operations of the plant as a whole. The following Friday, all six were again notified to report the next day and one of the supervisors individually stressed to them the necessity for their being on the job. When they failed to appear, another employee told the management that these workers had made up their minds not to work on Saturday. The company, fearing that this practice would spread to other parts of the mill, thereupon decided to discharge them for their collusive action.

At the arbitration hearing, witnesses for the union testified there had been no concerted action. Each of the six employees had had a special reason for not wanting to work the particular Saturday when all stayed away. The union contended, moreover, that the regular work week was from Monday to Friday and that in the minds of the workers Saturday was an extra and not a regular work day and therefore attendance on that day was discretionary with the employees.

Arbitrators' decision This case was heard by a board of arbitrators. The board held there had been errors on both the part of the management and the group of workers. It upheld the right of the company to schedule its employees to work on Saturdays. At the same time, the board made the following findings:

The recognition by each and every worker that the failure to report for work on the regularly scheduled work-day without permission to do so by management, subjects the offender to disciplinary action, will tend to discourage such absenteeism, and when disciplinary action is accompanied by joint action of the company and the union, the aim sought should be achieved more speedily.

The imposition of dismissal upon a group of workers upon their reporting to work, because the company believed the action by the workers was the result of collusion between them, without giving these workers any opportunity to be heard or to offer any explanation, is not the type of discharge that may be considered in connection with the contract provision which gives the company the right to discharge any employee for *reasonable* cause.

Thereupon the board ordered all six employees to be reinstated immediately.

With respect to the loss of pay following their discharge, the board ruled that the four employees who had been absent two consecutive Saturdays were to suffer the loss of one half of their earnings for the time they were out of work as a penalty for their unauthorized absence, and the company would have to pay them for the other half as its penalty for imposing unjustified and too severe measures. Having found that one of the other employees was absent only on the second Saturday and that the sixth had been excused from work on the first Saturday, the board directed that both of these employees receive full pay for the period following their discharge. The board considered that this disposition of the case would prevent a repetition of any trouble of the same sort. It went on to state:

Arbitration board is hopeful that this episode will lead to the introduction of a better method of handling the administration of dismissals when required, and would also lead to a better understanding henceforth between the company, the union and the workers and make the need for severe discipline entirely unnecessary, and result instead in the realization by each worker that the company can more successfully operate through wholehearted team-work by each and every one and that the success of the company is bound to bring benefits to the employees, in the long run.

REINSTATEMENT AFTER UNAUTHORIZED STRIKE

Contrary to the express terms of a no-strike, no-stoppage clause in the contract in effect in an underwear factory, a group of nineteen women workers engaged in a "wildcat strike" that lasted for nearly two months. When the strike was terminated the management refused to put them back on their jobs. The union, the gar-

ment workers (AFL), protested the company's action and did so on novel and most ingenious grounds.

Union's contentions The union frankly admitted not only that the strike was unauthorized but that its international representatives had taken strong measures to prevail upon the workers to abandon the stoppage and proceed in an orderly manner to adjust whatever grievances they might have. A "misguided leadership" had instigated the strike. The ringleader was an employee of the firm who had since engaged in business on her own account. The plant itself had been in operation only for a short time and the contract with the union was the first experience in management-labor relations for both the owners of the company and most of the employees. Due primarily to their youth, as well as their inexperience as union members, most of the employees were not familiar with the proper procedures to take in the settlement of grievances. Hence the illegal strike, which was finally terminated upon the intervention of the international representatives of the union.

The union spokesman declared that it was unfair on the part of the company to punish its employees by refusing to reinstate them and that the union itself should be entitled to discipline its members (after proper investigation and trial) for having brought discredit upon the long and honorable record of the union for observing its contractual obligations. Having brought an end to the strike by its own efforts, it was then the union's right and duty first to see to it that all employees were returned to their jobs and thereafter to ascertain which members were most responsible for the stoppage, and meting out to the guilty members the proper discipline.

Company position The company cited innumerable decisions by government agencies holding in effect that any concern has the right to refuse reinstatement to employees who are engaged in illegal acts. Patently, the cases of the employees concerned in this case were of the sort denounced and held illegal by the courts and other government tribunals. The workers singled out for refusal of reinstatement were the worst offenders. Most of them happened to hold some office in the union. Because of the determination of this group of workers, the union was evidently helpless to impose any form of discipline that would make them live up to their contractual obligations. Finally, the company asserted, the majority of its employees were desirous to keep this group out of employment

and if they were to be reinstated the morale at the plant would suffer.

Arbitrator's decision It at once appeared to the arbitrator that the only differences between the company and the union involved what were the appropriate disciplinary measures to be taken to prevent the recurrence of unauthorized stoppages and by whom such measures should be taken. The arbitrator ruled that the offending employees should be returned to their jobs and be considered probationary employees for a period of six months, during which time they would be subject to company discipline after due notice to the union. He further ruled that no compensation was to be paid to any of these workers for the time lost during the two-month period elapsing between the date of refusal to rehire and the date of his decision. His reasons for his findings and decision were set forth as follows:

Arbitrator is of the opinion that it would be contrary to the best interests of the firm and the union if, in this situation, the company would be afforded the opportunity to act unilaterally in administering "justice" concerning the entire group of workers whom it chose to punish for a "crime" for which apparently the big majority of the employees were guilty.

The arbitrator is fully aware of the seriousness of violating a contract entered into in good faith by a union, and of the importance to the stability of the union and the well-being of its membership, to see to it that contracts are observed and enforced.

The wholesale punishment of the entire group of nineteen workers without due trial is not only unjust in itself, but it is bound to cause more misunderstanding and create an impression among the entire membership that this old and highly respected union is not looking after the interests of its members properly, and particularly the deserving ones.

The testimony disclosed that most of the workers involved were young in years and in experience concerning the sanctity of union contracts.

There also appears to have been some influence brought to bear upon some of these workers that the arbitrator believes will no longer plague these workers. because of the departure of that influence into another field of endeavor. Many of these workers should therefore prove to be better employees and union members because of this unfortunate experience, while others may still need to be impressed further concerning union obligations and duties, and this properly becomes a duty and responsibility of the international union, with whom the company is bound by the existing contract.

CULPABILITY ON BOTH SIDES

When both parties to a dispute are equally at fault, then an equal penalty should be imposed on both. This is an essential principle followed by nearly all arbitrators in deciding cases involv-

ing discipline of employees. This was the principle followed by the arbitrator in disposing of the case of a spinner employed in a textile mill who had been discharged by his overseer for alleged insubordination.

Facts involved in the dispute The current contract, which was the first entered into between the management and the union, the textile workers (CIO), expressly authorized the company to maintain discipline and efficiency. It also provided that no discharge should be made without just cause, and cited insubordination as a just cause.

Mr. W., the spinner who was fired, had worked for the mill for more than six months. His work had been satisfactory. On the day he was discharged from the payroll, his overseer had ordered him to operate a double mule. He had always been engaged in operating a single mule. Mr. W. refused to accept the dual assignment, stating that he would prefer not to work at all that day because he was not used to handling a double mule efficiently. He was told by his overseer that he was through and to come in the next day and get his pay.

According to the union, there was sufficient work available on Mr. W.'s shift to enable him to operate at least six hours on a single mule basis. It argued that the overseer had acted arbitrarily in forcing him to move over to another machine. The union spokesman further asserted that the overseer had carried a grudge against Mr. W. since the company had overruled the overseer on a grievance filed by Mr. W. in which the overseer was found at fault for disallowing Mr. W. pay for time lost when his machine was down.

The union had another point to make. It alleged that the overseer had expressed a desire to fire all the spinners who happened to live in a different town from that where the mill was located. Mr. W. was one of the nonresidents and the overseer was just looking for an opportunity to make good on his expressed intent.

On the part of the company, it was stated that the customary practice, when materials were scarce or when necessary for other reasons to get efficient production, was to move spinners from single to double mules. When Mr. W. objected to his temporary transfer, he claimed he was being "tossed around" and exchanged some harsh words with the overseer. The refusal by Mr. W. to carry out the orders and his act in leaving his job and going home were definitely insubordination and a proper cause for discharge. The over-

seer testified he bore no grudge against Mr. W., but hadn't liked his attitude on the day in question and therefore felt that in order to maintain his authority Mr. W.'s discharge was necessary.

Arbitrator's decision First the arbitrator pointed out that it was obligatory upon workers to carry out reasonable orders by their overseers, and thereafter file their complaints through the existing grievance machinery and seek redress if they thought the orders were unfair or contrary to the contract. Thus Mr. W. should have complied with the overseer's order. On the other hand, the arbitrator concluded that when Mr. W. chose to go home for the remainder of his shift rather than accept an assignment that he felt unqualified to perform, this did not warrant the overseer's action in dismissing him on the spot. "Such impetuous action by an overseer," the arbitrator declared, "causes dissatisfaction and retards rather than aids efficient operation in the department and lessens rather than enhances cooperation from the workers."

The arbitrator directed the company to reinstate Mr. W. immediately to his former position. As a monetary penalty, he ordered the company to pay Mr. W. for half of the time lost following his discharge (this amounting to approximately one month), for the unreasonable action by its overseer. Likewise Mr. W. was to incur the loss of half pay for having been partially responsible for the harsh act of his overseer.

INSUBORDINATION WARRANTING LAYOFF ONLY

After discussion with the union, the molders and foundry workers (AFL), and with the union's approval, the management of a metal fabricating company posted the following shop rule:

The use of profane, abusive or threatening language toward fellow employees or supervisory executives, fighting or threatening bodily injury to other employees or refusal to work on job assigned by foreman or division head, and disobedience, will be cause for immediate dismissal.

The current contract vested in the company the right to discharge or lay off employees for failure to comply with plant rules that had been gone over with and agreed to by the union. A core oven tender, Mr. L., was discharged for violating the shop rule just cited. Until the day of his discharge, Mr. L. had regularly been working overtime. One of his duties on an overtime basis was to shut off some ovens after his regular shift was over. On the day he was fired he was instructed by his foreman to write on a blackboard

the list of ovens that were to be shut off following the end of the shift. At the same time his foreman, in the presence of Mr. L., brought in two officers of the guard force and instructed them how to shut off the ovens. A few minutes later, Mr. L. shut off the ovens, contrary to the scheduled time specified in the instructions written on the blackboard. When questioned by the foreman about this action, Mr. L. responded by calling the foreman a ——— liar. The company contended that Mr. L.'s action and statement constituted insubordination, as well as the use of abusive language in violation of the established shop rule and therefore warranted his immediate discharge.

The union side of the case introduced some entirely different elements. Mr. L. was the shop chairman of the union and in that capacity had informed his foreman that there would be trouble if nonunion workers were called upon to shut off ovens after the union workers had gone home. He was referring to the foreman's action in telling guard officers who were not members of the union how to shut the ovens off. At that point there was a misunderstanding between the foreman and Mr. L. as to who was to shut off the ovens and when, and this led to Mr. L.'s calling his foreman an unmentionable type of liar. Conceding that the language used by Mr. L. might be considered "illegal" in some circles, the union still maintained that the expression he used was rather commonplace among workers, not only in addressing each other but their foreman. Certainly, the union spokesman argued, it was not of sufficiently serious import of itself to warrant discipline. Finally, the incident occurred after working hours and under circumstances that were provocative and to a degree excusable.

Arbitrator's decision The arbitrator reduced the penalty of discharge to layoff without pay for six weeks. The shop rule invoked by the company was of course intended to protect the company's interest, the arbitrator declared, but was not intended to disregard the legitimate rights of employees whose past records have been clear and who became involved for the first time in a situation where there was a distinct possibility of misunderstanding and some cause for provocation. Such were the facts of this case. The arbitrator then ruled:

Disciplinary action, in order to discourage the use of disrespectful or unwholesome language (even if often resorted to in foundries), is indeed desirable,

and the language in the contract calling for "layoff" was undoubtedly intended to cover a situation such as the instant one.

LAYOFF PROPER PENALTY FOR SLEEPING ON JOB

The textile workers' union (CIO), representing the employees of a cotton manufacturing company, took to arbitration the question of the penalty imposed against one of its employees who was found sleeping on the job. There was no dispute about Mr. G.'s having actually been found sleeping. The question at issue was simply whether or not the two-weeks layoff was excessive for an offense of this nature.

It developed at the arbitration hearing that a week before the man's layoff he had been warned by his foreman for shirking on the job. In fact, he had been found loafing a considerable number of times in the previous few months. Thus it was not only the act of sleeping but his general attitude toward his work that motivated the company in laying him off for two weeks. Another significant factor pointed out by the company was that Mr. G., on the day he was found sleeping, had been called in for special work and was being paid time and a half for it.

Conceding that some penalty was justified, the union nevertheless took the position that in view of this man's thirteen years of employment and the fact that he had never been disciplined in the past for any offense, something less than a two-weeks layoff was all that was warranted. As for the man himself, his excuse was that he had not been feeling well on the day in question and had just lain down for a short while. After he was awakened by the plant's superintendent, he was permitted to and did complete his full day's work.

Arbitrator's decision Particularly because the company had been lenient in not disciplining Mr. G. for his lax conduct in previous months, the arbitrator held that the two-weeks layoff for sleeping was eminently proper. To modify the penalty, he stated, would be detrimental to the maintenance of good shop practice and proper discipline.

PENALTY FOR SLEEPING ON JOB LAYOFF AND NOT DISCHARGE

As happened in the case just cited, arbitrators, in deciding cases of sleeping on the job, usually have to take into account all of the collateral circumstances. Obviously the penalty to be imposed on a guard in a landing boat plant caught asleep on his job should be

greater than the punishment meted out to a garment worker who took "a few winks" at his bench.

A watchman in a shipbuilding company was discharged for sleeping, while on duty, in a part of a ship which he had no business to enter. His union, the marine workers (CIO), protested the discharge and sought his reinstatement with back pay.

The company pointed out that one of the rules that were known to all employees was that providing that any man caught sleeping on the job would be subject to discharge for the first offense. On the night when the watchman, Mr. M., was found asleep, his foreman, instead of waking him up immediately sought and obtained two witnesses, one of whom was the shop steward. He led them to the place where Mr. M. was sleeping, which was the refrigerator room of the ship where he was stationed. The foreman shouted to the man and he was promptly routed out. He then denied that he had been asleep but admitted that he had been in the refrigerator room for more than a half hour. The company contended that dereliction in the performance of the duties of a watchman was a very serious matter and that the discharge was absolutely necessary to safeguard all the other workers, as well as the property of the company.

In behalf of Mr. M., the union sought to mitigate the penalty. First it argued that there was no conclusive proof that Mr. M. had actually slept on the job. Secondly, it contended that some lesser disciplinary action should be imposed, if the arbitrator should believe the company's story.

Arbitrator's decision The arbitrator pointed out that Mr. M.'s absence for more than a half hour from his post was in part the fault of his foreman, who should have roused him immediately instead of letting him stay asleep while the foreman went to hunt up witnesses. This fact, together with the insistence of Mr. M. himself that he had not been asleep, left some doubt as to the real nature of his offense. The arbitrator concluded that the proper penalty should be a layoff from the date of his discharge to the date of the decision. This penalty, he stated, should be sufficient to warn Mr. M. and all other employees against a recurrence of an act of a similar nature. The total period of the layoff amounted to three months, and of course no compensation was awarded for the time thus lost.

DISCHARGE FOR FOOLING AROUND

An 18-year-old youth, Mr. L., who had been employed by a furniture manufacturing company for a year and a half, was discharged for persistent fooling around. He had been given innumerable chances to better his conduct. One of the supervisors under whom he worked had asked numerous times that he be dismissed. The management was indulgent with him however, because of his youth, and in spite of the fact that he had been given numerous warnings. In each instance when he was spoken to and asked to change his conduct, he acted in a surly manner, showing a lack of respect for his superiors and so annoying other workers that they could not perform their duties properly.

Among other things, Mr. L. had been repeatedly warned about going to the men's room much too often, for the purpose of loafing there.

On the day of his discharge, Mr. L. was singing and whistling in a very loud manner and was told by his foreman to stop. He persisted still further, telling his foreman that he would do what he pleased. After he had been warned twice, Mr. L. kept on his disturbances and spoke abusively to his foreman. At that point Mr. L. was discharged.

The foregoing was the account of the case presented by the company. The union, the furniture workers (CIO), felt there were extenuating circumstances. On the day of his discharge when Mr. L. and his foreman exchanged some harsh words, the episode, according to the union, had been precipitated by the foreman, who had spoken to Mr. L. very sarcastically. Thereafter the foreman picked on him by ordering him to stop singing. It was the general practice of many workers in the plant to sing while on their jobs.

The union admitted that there had been some fooling around in the shop by Mr. L. in the past. Again it stated that he was not the only one engaging in this sort of conduct, and in fact the foreman himself had done some fooling around too. The union did not go so far as to seek the reinstatement of Mr. L. with back pay, but it urged the arbitrator to order his reinstatement.

The arbitrator's decision was distinctly stated as follows:

Were the arbitrator to reverse the company's judgment in this case, he would be rendering a disservice to everyone involved, including the worker, as it would lead to the conclusion that his misconduct was made light of and that he had prevailed over the company's managerial rights and functions.

The arbitrator therefore rules that the company be sustained in this case and that the discharge stand.

DISCHARGE PERMISSIBLE ONLY BY MUTUAL CONSENT

A worsted manufacturing firm and an independent union representing its employees negotiated a most unusual contract clause relating to discharge matters. This clause read:

Discharges shall not be subject to the provision of arbitration but must be mutually agreed upon between the employer and the union.

How come, then, that a discharge case was submitted to arbitration? The answer is as novel as the contract clause itself.

For the purpose of the arbitration proceeding, both parties agreed to waive the clause exempting discharge from arbitration. Then they agreed to arbitrate the question of whether or not the particular discharge in dispute had been agreed to by the union.

Union's contention Mrs. C., an employee of the firm, had received a "separation notice" through the mails indicating that she had been discharged and the reason given was that "she is impolite and fresh with foreman." The union committee had not been consulted in advance about this notice, and if it had been notified would not have agreed to the discharge.

At the arbitration hearing members of the union committee testified there had been no meeting of the committee in regard to the discharge of Mrs. C. In the absence of the president of the local, who was also chairman of the union committee, Mrs. C.'s overseer had gotten in touch with the vice-chairman of the committee and asked him what he should do about Mrs. C., in the light of the alleged insubordination and other improper conduct. The overseer was informed that pursuant to the terms of the contract she should be kept on her job and her case would be taken up with the committee. Before the committee could consider the matter, the president of the local returned to work and was consulted by the overseer. He told the overseer it was all right to send her the separation notice. According to the union committee, this action was unauthorized, and was not made known to the union committee and therefore the discharge was contrary to the express terms of the contract.

All past relationships between the union and the company should have made the management fully aware that it took action on the part of the union committee to sanction a discharge. When the

committee was informed of what the president had done without proper authorization, he had immediately been removed from office.

Company position Mrs. C. was discharged after her overseer had requested her to report to work on a Saturday, when her services were urgently needed. She refused to do so and words followed. Mrs. C. used abusive language in talking to the overseer. She did not report for work on the Saturday, nor on the following Monday. When the president of the local came back after his brief absence, he was consulted on the matter and consented to the discharge. The company had accepted in good faith the word of the president and properly assumed that he was duly authorized to represent and bind the union in matters of this sort.

Arbitrator's decision The nature of the questions submitted for arbitration prevented the arbitrator from going into the merits of the case. In other words, it was not for him to determine whether or not Mrs. C. had been justifiably discharged. All he could decide was whether there had been duly authorized assent on the part of the union to the discharge.

The arbitrator pointed out that the management had always been aware of the fact that the union administered its affairs through officers and committees. No single individual, regardless of his position in the union, had had authority to bind the union. The evidence presented by the union spokesmen proved conclusively that the erstwhile president of the union was unauthorized to commit the union on discharge matters. The arbitrator was therefore compelled to conclude that Mrs. C. should not have been discharged unless and until there was a fully sanctioned agreement on the part of the union.

DISCHARGE FOR LOW PRODUCTION REVERSED

Mr. D., a cutter employed by a shoe manufacturing concern, was discharged for consistently and persistently producing a substandard amount of output. At least that was the reason advanced by the company.

The union thought differently. It was the shoe workers' union (CIO). It contended Mr. D. had been discriminated against after he had become chairman of the executive board of the local, and had participated in a meeting with the company attorney to protest certain changes in piece rates. Immediately after that meeting,

according to the union, Mr. D.'s foreman began to show dissatisfaction with his output, and a month later he was discharged, ostensibly because he had to be paid too much "make-up money." Like other cutters, Mr. D. was paid on a piece-rate basis with a minimum hourly guarantee. The union contended that Mr. D. had been given such varied types of work as to make it impossible for him to earn the minimum guaranteed rate. It pointed out that another cutter assigned to work similar to that of Mr. D. had been paid considerable make-up money but no disciplinary action was taken against him. It insisted that Mr. D. was discharged primarily because of his activities as a union officer in attempting to obtain increases in the piece rates for all of the employees.

Company's position The company denied that there had been any discrimination against Mr. D. The management was not aware that he had been a member of the committee that conferred with the company attorney when the controversy over piece rates arose. As a matter of fact, none of the committee who did the same sort of work as that done by Mr. D. had produced as little as he had been producing. Consequently, there was ample reason to discharge him for inefficiency and low output.

The company spokesman asserted that the only reason Mr. D. had been retained in its employ for as long as he had been was on account of the acute labor shortage in the area. His foreman had urged him to increase his production but he had not done so. As Mr. D. had consistently fallen behind the reasonable standards of output of the job he occupied, the management had a right to discharge him. Otherwise the company would fail in its obligation to those of its workers who were making a sincere effort to maintain reasonable production standards on their respective jobs.

Arbitrator's decision During the last four weeks before the discharge of Mr. D., his production had substantially increased. Correspondingly, the make-up money paid to him had declined. Moreover, there was evidence to show that the piece-rate standards set by the company on a unilateral basis were far from reasonable and this accounted for his apparent poor showing. In the light of all the evidence which indicated primary fault on the part of management, the arbitrator ruled that Mr. D. had been unjustly discharged and was entitled to reinstatement with full pay for loss in earnings while he was idle.

DISCHARGE FOR DRINKING UPHELD

Traditionally, intoxication on company premises has been considered a proper basis for discharge in nearly all companies and industries. That has become so commonplace that there are few contracts that single out and list drunkenness as a special reason for discharge. Nevertheless, arbitrators are often called upon to rule as to whether or not a given individual actually was inebriated and also whether or not there might be circumstances that tended to excuse the employee's condition.

Mr. C., an employee of a textile firm, was discharged after he had entered the mill under the influence of liquor. He had arrived a half hour before his regular starting time and thereupon proceeded to engage in loud and boisterous arguments with some of the rank-and-file workers and supervisory employees as well. In so doing he used abusive and profane language and spoke disrespectfully to his overseer when ordered to leave the premises. According to the company, he was obviously under the influence of liquor. Management spokesmen asserted that Mr. C. had entered the mill in a drunken condition with a definite intention to cause a disturbance, and not to attempt to work on his regular shift. Indeed, he had not even rung in his timecard. The day after this incident occurred, the overseer visited his home to deliver his pay check to him, but he was not there. The following day the overseer went to Mr. C.'s home again and was informed by his wife that he still had not come home. The overseer thereupon delivered the pay check to his wife and let her know that her husband was through.

Union contention The union representatives, who were affiliated with the AFL textile workers, argued at the arbitration hearing that Mr. C. had been discharged because of his activities on behalf of the union. They asserted that the episode of alleged drunkenness was used only as a subterfuge by the company. His work record was beyond reproach. Both his overseer and the superintendent had admitted that Mr. C. was one of the best weigh men they had had on that type of job. Mr. C. himself testified he had not intended to work on the day he visited the plant after having had a few drinks. He was celebrating his son's birthday and came to the plant merely to tell his overseer that he intended to take the day off. Finally, the union urged that the method used in discharging him, as well as the reason for the discharge, was definitely unjust, since Mr. C. was not

fired on the job and didn't know of his termination until his wife informed him of the fact.

Arbitrator's decision It was not denied by the union that Mr. C. had come into the mill in an intoxicated condition and had, on his own admission, used loud and abusive language. Neither was there any dispute that he was in no condition to start work. While it was not clearly established whether he had asked permission to stay out for the day, the fact remained that Mr. C.'s conduct was unbecoming and his visit unwarranted in his condition. The arbitrator accordingly ruled that the company had acted fully within its rights in dismissing Mr. C. for his conduct and condition on the day in question.

PENALTY FOR DRINKING MODIFIED

In another case where there was uncertainty as to whether or not a man was actually intoxicated and where it appeared that the use of liquor on the job had been tolerated by management, the facts presented to the arbitrator led him to the conclusion that discharge was too severe a penalty, and only a thirty-day layoff was justified.

This case involved a boatman who was working for a shipping corporation. This boatman, Mr. R., had been informed by the mate one evening that the next morning he would be expected to paint his ship's stacks while his boat was tied up. He did not show up for work in the morning and was not to be found in his room.

According to the company, he was seen in the middle of the morning coming down a hill toward the boat and when he arrived aboard he was evidently under the influence of liquor. Because of Mr. R.'s condition, the mate did not consider it safe for him to be hoisted to the top of the stacks to do any painting. The mate then told him to go get his time and discharged him.

His union, the maritime union (CIO), categorically denied that Mr. R. had neglected his duty or had been intoxicated. After he had completed his early morning routine on the boat he went ashore with another member of the crew and was gone about an hour and a half. He returned alone. He admitted having had two bottles of beer, but insisted that he was not intoxicated when he reached the boat.

At about the time when Mr. R. was being told to go get his time-check, two international representatives of the union happened to appear at the scene. They saw Mr. R. and they testified he did not

appear to be drunk to them. When he told them he was fired they got in touch with the mate and requested that Mr. R. be given another chance. But the mate was adamant in his decision.

The union representatives then escorted Mr. R. to a public hospital, with the view to having him put through a sobriety test. The attending physician told them that no such tests were made there. The doctor did, however, state that Mr. R. did not look drunk to him. Three hours later, he was taken to a private physician. After examining Mr. R., the doctor issued a certificate in which he said that it would have been impossible for the patient to have been intoxicated three hours before and have shown such a normal aspect at the time of the examination. The examination covered Mr. R.'s heart, blood pressure, and reflexes.

A further point was made by the union to the effect that the corporation had not been at all strict in its enforcement of rules in regard to coming aboard ship under the influence of liquor. Consequently, the union insisted that the penalty of discharge was much too severe.

Arbitrator's decision The arbitrator agreed with the company that the weight of evidence caused him to reach the conclusion that Mr. R. had unquestionably been drinking and that some disciplinary action was warranted. A permanent dismissal seemed to him much too harsh, under the prevailing circumstances. The arbitrator ordered the immediate reinstatement of Mr. R., but he ruled that a disciplinary layoff of thirty days without pay was in order. Since he had been out of work and available for work for a six-week period following his discharge, the arbitrator ordered the company to give him two weeks pay for time lost in excess of the month's layoff, this constituting the maximum penalty held appropriate.

TWO WRONGS DON'T MAKE A RIGHT

Human nature being what it is, it is no wonder that every now and then people decide to take things into their own hands. They do not want to wait long enough for the normal procedure for remedying their wrongs to be completed. When the provocation is great enough they act on their own, to result in many crimes and many domestic difficulties and many unfortunate incidents in the office or shop.

If a company persists in doing what a good union member thinks

is utterly wrong and contrary to the contract, what should he do? Should he appoint himself judge and jury and decide on punitive action? Of course the answer is no—and that was just the answer the arbitrator was forced to give when the machinery workers' union (CIO) protested the suspension of one of its key men by a railroad equipment company after he had refused to let piece-rate studies be made on his own job.

For many months a dispute had been going on between the management and the union as to the meaning and effect of certain contract clauses relating to fixing temporary and permanent piece rates. There was no attempt on either side to delay the ultimate decision. It just took time to study all the angles. But Mr. L. thought too much time had elapsed and that the company was assuming an arbitrary attitude. So when the time-study people got around to him and tried to review the rate on his job, he objected strenuously. He said the company had no right to time his rate and refused to cooperate with the time-study men. He was suspended for one week forthwith.

The union challenged the suspension as being unjustified. After a conference with the management it was agreed that the man should return to work the following day provided he would permit his job to be studied. But the union still insisted that he should not have been suspended. The only basis for its position was that a major dispute was pending, involving the rights of the management to change rates on a large number of jobs.

Arbitrator's decision The arbitrator was obliged to disregard all of the testimony, however interesting and important to both the union and the company, as to who had the right to do what in connection with setting piece rates. The contract was entirely clear in providing an orderly method for taking up and settling all types of grievances. It was clearly evident that Mr. L. was determined to prevent the company, before any final settlement or agreement was reached, from proceeding to have a proper time study made of his job. He thus refused to carry out his duties as directed by the management. Accordingly the arbitrator ruled that the company had acted within its rights in suspending Mr. L. for proper cause, and directed that no pay be awarded to Mr. L. for the two and a half days that he was idle as a result of his refusal to carry out company orders.

DISCHARGE OR RESIGNATION

An AFL local union representing the employees of a cutlery producing company, brought to arbitration the question of accepting either the company's claim that the resignation of Mr. W. was valid or Mr. W.'s claim that he was discharged by the company. If Mr. W.'s claim was accepted the question arose of whether his discharge was justified.

One day Mr. W. learned that a fellow worker doing the same type of work was informed by the factory superintendent that he was going to get an increase of five cents an hour. Mr. W. then demanded the same increase. He had previously asked for a raise and had been told at the time that he would have to wait. When he learned that his co-worker got an increase and still no raise was forthcoming to him, he became very resentful. He removed his overalls, washed his hands, and told the foreman that he would quit if he didn't get the raise that he had demanded.

The matter was then taken up with the factory superintendent who, according to Mr. W., told him that he would have to talk to the president of the company. After some pleading by the superintendent that he finish the work which he had in hand, he agreed to do so. Later that day when he was able to see the president, he went to the latter's office and said, "Do I get my raise? If not, you had better look for another man, because I am quitting if I don't get my raise." According to Mr. W., the president said he was not ready to give the increase and that if Mr. W. wanted to quit and turn in his time that was O.K. with him. Mr. W. thereupon turned in his time, got his money, and went home.

All this was the account as presented to the arbitrator by Mr. W. himself. The company spokesmen substantiated his testimony. They further added that when Mr. W. said he was quitting the president asked him if he would like a letter of recommendation. When Mr. W. said he would, the president immediately dictated a letter and gave it to him.

At the hearing, the president conceded that Mr. W. had been a good worker and further that there was no basis to assert that he had been discharged. According to the president's testimony, however, it appeared that Mr. W. changed his mind after tendering his resignation and asked to get his job back. Meanwhile, changes in work assignments had been made in Mr. W.'s department, other

employees had been broken in to do some of the work previously done by Mr. W., and there was no work for him.

The spokesman for the union made the point at the hearing that perhaps Mr. W. had not actually quit his job but had merely threatened to do so and when the president told him "to turn in his time," he took it as an order to go, and considered himself discharged.

Arbitrator's decision Upon review of all the facts, including the statement by Mr. W. himself, who in his own words indicated that he had quit of his own accord, the arbitrator ruled that Mr. W. had not been discharged by the company but had resigned voluntarily because of the refusal of the increase he demanded. The arbitrator found therefore that, not having been discharged, Mr. W. was not entitled to demand reinstatement.

"HE WHO IS WITHOUT SIN . . ."

Much has already been said about human nature. Arbitrators are human beings too. In some cases, just as judges have to do, they are obliged to keep to the letter of the law—the language of the contract. When the contract leaves to them full discretion to determine what, for instance, constitutes discharge for just cause, it is no wonder that an element of compassion will enter into their findings and awards.

A dispute arose between the teamsters' union (AFL) and a wholesale drug company as to whether one of its truck drivers, Mr. G., was justifiably discharged for dishonesty. Actually, the question amounted to determination of whether or not Mr. G.'s conduct really amounted to dishonesty at all.

Company's position Mr. G., in the course of his regular duties as a truck driver, delivered to a retail drugstore two C.O.D. lots on two different days. The combined total of deliveries amounted to about \$150. He received payment for both orders on the day of the second delivery. He failed to turn the money over to the company, as it was his duty to do, on the day following the receipt of the money by him.

About a month later, the management learned through a phone call from a bank that Mr. G. had applied for a loan in order to pay to the company the amount of the C.O.D. collection which he had apparently used for his own purpose. Upon investigation the management learned that Mr. G. had failed to turn in this money. Further investigation developed the fact that before the bank had called

the company, Mr. G. had requested a loan from the company itself. In doing so he stated that he needed the money to fix his roof and also to meet other personal expenses. The loan had been approved but actual payment had not been made, awaiting the execution of a note by Mr. G. As soon as the head of his department was notified that Mr. G. had failed to repay the C.O.D. collection that official ordered him to make the payment immediately. Mr. G. turned over the proper amount to the company the following day.

Three days after Mr. G. had made restitution he was discharged. The reason given by the company was that he had committed an act of dishonesty while on duty. The company justified the discharge on the grounds, among others, that large sums of money were constantly being handled by the truck drivers and if the company were lax in permitting such practices to go on without proper punishment, it would lose its protection under the indemnity bond which it carried with a surety company. The bond referred to made it necessary for the company to give a warranty that none of its employees had committed any fraudulent or dishonest act in any position in the service of the company or otherwise. The bond further required the company to notify the insurance carrier of any fraudulent or dishonest act on the part of any employee at the earliest possible moment. The requisite notice was given by the company to the carrier in the case of Mr. G.

Union contention For more than twenty years Mr. G. had enjoyed a justified reputation as a reliable and conscientious worker in the employ of the company. In fact, by the incident that led to his discharge, Mr. G. had himself proved his conscientiousness. In no way had he tried to hide the fact that he had failed to turn over the money to the company. Indeed, he voluntarily made a statement to the bank when he tried to negotiate a personal loan, that the loan was for the purpose of making good a C.O.D. collection which he owed to the company. Mr. G. had used some of the money he had collected to repair a leaky roof. He did not hide this fact either from the company or from the bank. It was through his own actions in seeking a bank loan that the company learned of his delay in turning the money in. Furthermore, as soon as requested by the company he made good on the amount that he had withheld. All of these facts, according to the union, supported their contention that Mr. G. had never intended to nor actually had performed a dishonest act.

Then too, the union charged the company with what the lawyers call contributory negligence. Never in the past, the union spokesmen asserted, had the company insisted that collections be turned over promptly. In fact at the arbitration hearing the union evoked from company witnesses testimony to the effect that truck drivers were not checked on too strictly in regard to outstanding C.O.D. collections. On the basis of the foregoing arguments the union contended not only that the discharge be reversed by the arbitrator, but that the company be required to reinstate Mr. G. with full pay for all time lost since his discharge.

Arbitrator's findings and decision In reviewing this case in the course of preparing his decision, the arbitrator realized that the issue presented to him should be broken down into the following three categories:

1. The company's right to dismiss Mr. G. under the language and intent of the existing contract. (The contract permitted discharge for just cause and included dishonesty as a proper cause for discharge.)

2. The company's duty toward an employee who had evidently served it well and faithfully for the past twenty years.

3. The arbitrator's authority to substitute his judgment for that of the management concerning the meaning of the word "honesty" in connection with the turning over to the company of C.O.D. collections by the truck drivers.

Here are some of the facts brought out at the hearing that were regarded by the arbitrator as particularly significant:

1. The company had not been very strict in the past in its requirement that C.O.D. moneys collected the day before must be turned in on the following business day.

2. The company had permitted more than a month to elapse before checking as to whether Mr. G. had turned in the particular collections that gave rise to the discharge.

3. Had not Mr. G. himself informed the bank where he sought a loan of the reason why he needed to borrow money, it was quite probable that the discovery would not have been made at the time it was made.

4. It was clearly established that Mr. G. had had an excellent record, had told no untruth in connection with the matter, and had promptly turned the money in upon being requested to do so.

In his decision the arbitrator reasoned out loud as follows:

Strictly speaking it may be argued, even temporary use of moneys without authority by the company is a dishonest act. On the other hand, should not some consideration be given to an employee with a fine record of twenty years, to a misstep which did not result in any loss of money to the company, and which misstep was not hidden or attempted to be hidden by the offender?

The arbitrator's task seems to be whether this first offense by the driver, Mr. G., in using the C.O.D. money for his own purpose for a short period, before turning it over to the company, constitutes dishonesty, as the company alleges, or merely constitutes an indiscreet act, without any intent of dishonesty retaining the money (which was not retained) as the union claimed.

The arbitrator is of the opinion that in this case it may well be said that justice must be tempered with mercy, and to accuse Mr. G. with being dishonest and therefore deserving dismissal from a job which he had held for twenty years, with the consequent record concerning the cause for the dismissal, is not only not tempering justice with mercy, but is applying justice altogether too harshly.

The famous statement by the Master comes to the arbitrator's thought: "He who is without sin let him first cast the stone." Assuming that Mr. G. did commit the sin of borrowing the company's money without authorization, the punishment to be meted out, in the arbitrator's judgment, is not to be the most severe one.

Appropriate disciplinary action, so as to impress Mr. G. (and others) that such practice cannot be tolerated, is in the arbitrator's opinion in order in this case.

The arbitrator accordingly rules that Mr. G. should be reinstated to his former job not later than a week from the date of this decision. He is not to be compensated for any loss of earnings he sustained since his discharge. This loss of earnings by him is to serve as a warning that he must in the future turn in promptly all collections.

DISCHARGE OF MILITANT STEWARD SUSTAINED

Workers' sentiments regarding the firing of shop stewards being as strong as they are, it is always particularly difficult for management to prove that it is justified when it discharges a union steward. A company will often tolerate twice as many acts of insubordination, of belligerency, or of misconduct, than it would in the case of any other employee, just to make sure that other union members will not think that an employee's stewardship had anything to do with its decision to discharge him.

In a New England furniture concern, a union of furniture workers (CIO) took to arbitration the case of a discharge of a girl steward. The union claimed that the discharge was without justification and had been precipitated because the worker, Miss H., had incurred the disfavor of the management on account of her activities in taking up grievances in behalf of her fellow union members.

These activities included Miss H.'s complaint that workers in the finishing department were laid off, while workers from another department were given work that should have been performed by the finishers, and also her refusal to work on a difficult item, except on an hourly basis, until an adjusted piece rate was set for her. This second act, the union asserted, was justified because Miss H. had asked the company to restudy her job and it had failed to do so. This occasioned her to go ahead and work on the difficult item on an hourly basis, after having told her foreman that that was what she was doing until such time as her piece rate was adjusted. The company's failure to restudy her job greatly agitated this worker, particularly since she was convinced that the rate originally set was insufficient to enable her to earn the average incentive rate previously earned by her.

The union therefore urged that this worker be reinstated and compensated for loss of earnings sustained between the date of her discharge and the date of her reinstatement.

The company spokesmen averred that Miss H. had performed her duties in the finishing department satisfactorily until she became shop steward for the union some two or three years before. Her record of earnings had shown substantial increases since the incentive system was introduced. Despite this fact, Miss H. had seemed to acquire a belligerent attitude and from time to time had taken the position that she could do as she pleased, and "the union would take care of her." In fact, she had often been boisterous and militant and had caused a great deal of disturbance in the shop.

Shortly after a piece rate was applied to a new table, which was not to her liking, the company asserted, "Miss H. raised a big fuss and kicked a large quantity of tables over, making a very loud noise, and then repeated this practice at a later date."

On the morning when she had insisted on working on an hourly basis, the company spokesmen said, Miss H. undeniably began to perform her work at a much slower pace than she would have been performing it on an incentive basis. When her foreman called this to her attention, and insisted that she must perform her work on a piece-rate basis, she refused to carry out the foreman's orders. The company spokesmen stated that this left the foreman no alternative but to dismiss her because of her insubordination. The company further claimed that Miss H. had previously been warned in regard to her failure to carry out orders, and also in regard to her general

attitude toward management, and this event, being the third act of insubordination, fully justified the company's action.

The arbitrator found that Miss H. had failed to recognize her duty and obligation under the contract, which was to proceed in an orderly manner and to file a grievance and seek proper adjustment from the company, and this she could have obtained if it was warranted. Also, in the arbitrator's opinion, Miss H. had evidently deported herself in a manner which was not conducive to harmonious relations with management. This opinion was based on the worker's own admission that these acts of insubordination had actually been committed by her, and furthermore, they had been tolerated for some time by the company. The arbitrator therefore concluded that the company appeared to have had proper cause for the action it took in discharging this worker, and he sustained its action under the circumstances.

In view of Miss H.'s good record as a worker prior to the period when she was given authority to represent the other workers, the arbitrator believed that this experience would assist Miss H. in realizing that workers, as well as companies, have responsibilities, besides their rights and privileges, under a union contract. He likewise hoped that the company would feel that Miss H. would "turn over a new leaf," and deport herself properly in her work. He therefore recommended that she be given an opportunity to prove her worth and that she be reengaged as a probationary employee for ninety days, and that the union name a shop steward in Miss H.'s stead.

Were the company to accept this recommendation voluntarily, the arbitrator indicated, it would remove all suspicion from the minds of the workers that Miss H. was being punished because of her aggressive acts in connection with her union office.

7. WAGE DISPUTES ARISING OUT OF CONTRACT

Some contracts are so worded as to permit any difference or dispute, regardless of the reason, to be submitted to arbitration. It is contracts of this sort that give rise to innumerable arbitration cases in wage matters. But even if the contract is framed so as to preclude demands for general wage adjustments during its tenure, a considerable number of wage disputes still may arise. These ordinarily relate to the proper rates to be paid when new jobs are created, or when the job content changes sufficiently to warrant reconsideration of the previous rate. Then there is a very considerable variety of wage issues that may come up in the course of everyday applications of the contract to new or unusual conditions.

When negotiating a contract, the union and the management will wish to ponder seriously the question of whether or not to allow new wage questions to be brought up and taken to arbitration during the life of the contract. This is a matter of utmost importance. There are many angles to the problem. On the one hand management may say: "The chief value to us of entering into a contract is to assure stability for a one or two-year period. Then we can know what our labor costs will be. We will be free of any uncertainty as to what rates we will have to pay three months or six months from now. When we negotiated the wage clauses we meant them to stick and the union is bound to accept them and live with them."

On the other hand, the union might argue as follows: "Certainly we agreed on a general wage increase of x cents for the next year. But nothing remains static. We couldn't take time and the management didn't want us to take time during the negotiations to review the fairness of every single job rate. Nor did we spell out all the terms and conditions under which adjustments in rates might be necessary or appropriate. Would the management want to have festering sore spots develop and remain uncorrected for a whole

year if some injustices or inequities should appear after the contract was put into effect? Dissatisfied workers are poor producers. If certain rates turn out to be too low relative to the pay of other people, why shouldn't both sides try to get together on new rates and if they are unsuccessful, why shouldn't the dispute be taken to arbitration?"

It is not necessarily the management that always favors frozen wage rates or the union that advocates opportunities for reopening. Sometimes the tables are reversed. The union may have won an excellent bargain and may want to assure the freezing of all rates for the life of the contract. The company may desire opportunities to reopen wage questions in order to reduce individual rates previously agreed to that may later seem to be out of line. Certainly there is no unanimity of thought on the question. And the contracts under which wage matters have come to arbitration show a wide diversity in purpose, in contract language, and in the phraseology used in providing for arbitration of wage issues.

Whatever their views on frozen or nonfrozen wage structures, employers and union leaders almost always want to establish suitable procedures for settling any possible disputes regarding the rates to be paid for new or changed jobs. At the time of contract negotiations it is impossible to foresee or predict what changes may be made in a company's operations while the contract is in effect. Rates for nonexistent jobs cannot be negotiated at that time. Nor can rate adjustments that might be warranted by changes in working conditions be anticipated. Hence the inclusion in nearly every contract of a clause to the effect that upon the creation of a new job management will set the rate and after review and discussion by the union, if the rate is found unsatisfactory, the proper rate shall be decided by an arbitrator. There are of course variants to this type of provision. In some instances the rate has to be jointly set by the union and the management before any work can be done on a new job. In others, the rate for a newly established job is fixed for a specified trial period and only after the trial period can the rate be protested through the grievance procedure.

RATES FOR NEW JOBS

A contract entered into by a large textile firm and the textile union (CIO), contained the following clause with respect to fixing rates for new jobs:

Whenever new jobs are installed or jobs are changed to incentive, where no rate or base rate has been established in the wage scale, the company will notify the union in writing of the proposed rate or base rate for such jobs. Upon receipt of such notice, the national representative of the union and a representative of the management shall meet to discuss the proposed rate. If agreement is reached, such agreement shall be reduced to writing as an amendment to the wage scale of this agreement. Should they fail to agree within ten days of the initial discussion, the matter shall be referred to arbitration as provided in this agreement.

This clause had to be invoked when two new jobs were created at the time a new boiler was being put into operation. The jobs were those of boiler operator and auxiliary boiler operator. The company fixed the rates for the jobs, it contended, on the same basis that rates for all other jobs in the maintenance department had been established. Even so, the union felt that the new rates were much too low. Its representatives demanded a rate for boiler operator of some four cents higher than the rate decided on by the company, and a rate for auxiliary boiler operator at least 25 cents higher than the established rate.

The union advanced two main arguments in support of its demands. One was that its proposed rates were in line with those being paid by a considerable number of companies in the general area. The other reason was that the new jobs were unusually hazardous and therefore the operators should get proportionately higher rates. In fact the union insisted that the rates for these two jobs be substantially higher, on account of the alleged work hazard, than any other jobs in the mill.

The union also asked that the adjustment, if ordered by the arbitrator, be made retroactive to the date when the change was made. It cited the contract clause that called for this retroactivity.

To prove that it had good grounds for fixing the rates it did for the two jobs, the company submitted exhibits showing that its rate for the boiler operator was higher than that paid by other mills in the same state and in two neighboring ones. The company conceded that higher rates were paid by power companies in the same area, but it pointed out that these were utilities, and were in no sense competitors, therefore the rates paid by them did not represent a true basis for comparison.

As for the auxiliary job, the company pointed out that the increased rate it had fixed was based on the job evaluation it had made for the position. And although other companies showed a

wide divergence in the rates set for this job, possibly this was due to a divergence in job requirements in different companies.

Since the parties could not agree on the rates for the new jobs, the matter rested for six months, at the end of which period the union requested arbitration. The company agreed that the date the new jobs were first installed was the proper date for the new rates to begin.

The arbitrator reached the conclusion that the new rates proposed by the company were proper and should be put into effect. And since the contract did in fact call for retroactivity to the date of the change, he ruled that the increased rates be made retroactive to that date.

WHEN IS A JOB A NEW JOB?

In contracts which permit wage adjustments to be made through the grievance procedure only when new jobs are established, it is often difficult to determine where the line should be drawn. What is a new job? The answer is not as easy as it might seem.

Obviously, assigning more work of exactly the same kind to an employee or group of employees does not result in the creation of new jobs. But a realignment of duties with some substantially different functions does result in creation of new jobs. If the question of whether or not a new job has been established is answered in the affirmative, there remains the problem of setting the new rate for it. And when disputes arise over the rate, the usual and logical basis is to fix a rate that would keep the new job in proper relationship to the rates paid for closely comparable positions.

A double-barreled dispute arose between the electrical workers' union (CIO) and a machine tool company with the introduction of an incentive-pay system in some departments of the plant. The work of the timekeepers in these departments underwent a decided change. The union contended (1) that the added responsibilities of the timekeepers in the incentive-pay departments actually resulted in the creation of a new job, and (2) that the timekeepers in these departments should have a higher rate of pay than the timekeepers in the nonincentive departments.

The company's position was that the added work assignments were not of sufficient consequence to warrant reclassification of any of the timekeepers, and that even by reevaluating the jobs under the point system then in effect, no rate increase could be justified.

The main points of difference involved how much should be given in the way of point allowances for three factors, namely, "basic knowledge," "dexterity demand," and "physical demand." The union pointed out there were several other jobs in the plant which had the same requirements, so far as these factors were concerned, and that these other jobs had been given higher point allowances on these factors. The company maintained that the timekeepers in the incentive pay departments were required to exert much less physical effort than the other timekeepers, and that the reduced physical demand should offset the higher point allowances for the two other factors.

The case was heard by a board of arbitration. The board disagreed with the company. It found that the reduced physical demand was not enough to offset the greater responsibility and experience required by the changed occupation. Accordingly, the board ordered that the timekeepers in the incentive-pay departments should be put into a separate classification and that their rate should be one job-grade higher than the rate paid the other timekeepers.

RATE ADJUSTMENT ON REALLOCATION OF WORK

Under a contract providing for arbitration of any dispute over rates arising on account of changes in work assignments, the textile workers' union (AFL) took to arbitration a dispute that arose in a cotton finishing firm.

Two different groups of employees were involved in the dispute. One group consisted of four men in the starch department. These workers claimed that when the management eliminated the job of a calender operator they had to do all of the work previously done by that man. Accordingly they sought a proportionate increase in their rates.

The other group included three tenders in the bleach house. They argued that the management had eliminated one tender's job, leaving the three of them to perform the work previously done by four.

The company insisted that both changes in work assignments were the result of gradual mechanical improvements in the respective departments which had been introduced over a period of several years. Finally, some additional changes in equipment were made which in both cases made it possible to eliminate a job. The

company took the position that there had been no substantial increase in the work load that would justify any upward rate adjustment.

At the arbitrator's request and with the approval of both parties, the United States Bureau of Labor Statistics made a survey of the work loads of groups of employees in other textile mills doing this same general type of work. The results of this survey were inconclusive and the arbitrator therefore based his findings on his own factual determination as to the extent, if any, of the change in duties of the employees of the starch department and the bleach house. In each instance he found that the changes in equipment had indeed made it practicable to eliminate a job without placing any undue burden on the remaining employees. He did find, however, that the work load of each group had increased by approximately 5 per cent. Thus he ordered an increase of 5 per cent in the rates of the employees affected.

REEVALUATION OF NEW JOB

When a new job of tester was established in a department of an electrical equipment company, the union, the electrical workers (CIO), questioned the propriety of the rate and the dispute was ultimately taken to arbitration. The method used in establishing rates for new jobs in this plant was that developed by the National Metal Trades Association. It is similar to the job evaluation plan sponsored by the National Electrical Manufacturers' Association.

In this particular case, it became necessary for the arbitrator to observe the work being done in the department, in order to consider the accuracy and fairness of the company's evaluation of the job.

For each major factor used in the job evaluation plan, there were five different degrees which might be assigned to any job. Each degree carried with it a specified number of points. The total point score determined the job grade and therefore the rate of the job. The disputed contentions of both parties and the arbitrator's finding are discussed below.

Initiative and ingenuity The company rated the tester job as calling for the fourth degree of initiative and ingenuity. In the standard job evaluation plan used in this plant, the fourth degree was defined as follows:

Requires the ability to plan and perform unusual and difficult work where only general operation methods are available, and the making of decisions involving the use of considerable ingenuity, initiative and judgment.

The union insisted that the job should be assigned the fifth degree, which carried the following definition:

Requires outstanding ability to work independently toward general results, devise new methods, meet new conditions necessitating a high degree of ingenuity, initiative and judgment on very involved and complex jobs.

The job description as supplied by the company indicated that the tester was required to do diversified work on intricate equipment and complicated circuits. The union said this was inaccurate, for the job actually called for highly diversified work requiring an unusually high degree of initiative and ingenuity, such as would justify a rating in the fifth degree.

The company maintained that the tester job had no requirement for outstanding ability and that no unusual ingenuity was required because the tester was not expected to devise any new methods.

The arbitrator ruled that the fifth degree should apply, as there were more responsible requirements to the job than appeared in the written job description originally prepared by the management.

Physical demand The company had assigned the second degree for this factor. The definition of the second degree was:

Light physical effort, working regularly with light-weight material or occasionally with average weight material. Operate machine tools where machine time exceeds the handling time.

and for the third degree it was:

Sustained physical effort, requiring continuity of effort working with light or average weight material. Usually short cycle work requiring continuous activity. Or the operation of several machines where the handling time is equivalent to the total machine time.

It was the union's contention that the third degree applied. The job description written up by the company for tester indicated that it involved only light physical effort in testing and inspecting apparatus and equipment. This the union regarded as inadequate. It pointed out that the tester had to spend much of his working time in an awkward crouching position while hooking up controls and that such a position was extremely tiring. The company sought to justify its second-degree rating of this factor because the job involved

no lifting of any sort. The testers, the company pointed out, had to spend 60 per cent of their time hooking up ends on panels and this had to be done in a bent position sitting on a low stool. Were it not for this unusual requirement, the job would have rated only the first degree for physical effort. It was because of its realization of the unpleasantness and fatigue caused by the stooping position that the company assigned the second degree to the job.

The arbitrator felt that the company had substantiated the correctness of its rating on this factor and let the second degree rating for physical effort stand.

Mental or visual demand On this factor the job had been rated by the company in the fourth degree, but the union insisted the fifth degree should have been used. The respective definitions of the fourth and fifth degrees were:

Must concentrate mental and visual attention, closely planning and laying out complex work; or coordinating a high degree of manual dexterity with close visual attention for sustained periods.

and

Concentration and exacting mental or visual attention, usually visualizing, planning and laying out very involved and complex jobs.

The applicable portion of the company's job description was:

Must concentrate mental and visual attention closely to large number of details, interpreting specifications, inspecting, testing. Record test readings on data sheets. Watch for errors in engineering data, diagrams, or specifications.

In support of its position, the union insisted that the tester job required unusual mental concentration in hooking up from 200 to 800 leads to various controls. Moreover, the tester must have exceptional visual attention because he had to observe all switches in action and see to it that they were all performing perfectly.

It was the company's contention that there was a direct relation between mental and visual demand and initiative and ingenuity. A job of considerable complexity required close mental and visual attention—but, the company insisted, the fourth degree was adequate since the fifth degree applied only to jobs of the very highest complexity and difficulty.

The arbitrator upheld the union's contention on this factor, pointing out that the work certainly called for great concentration and exacting visual attention.

Working conditions The union argued that the third degree should apply to the tester job instead of the second degree, as assigned by the company. The second-degree definition was simply: "Good working conditions. No disagreeable factors." The third degree definition was: "Somewhat disagreeable working conditions due to exposure to one or more such elements as the following: dust, dirt, heat, fumes, cold, noise, vibration, and so forth."

According to the union, because of the cramped quarters in which the testers had to operate, the men frequently tore their clothes and often got cuts or scratches from the sharp edges of their testing boards. Then, too, the union charged that there was inadequate heat in the winter and poor ventilation in the summer. All this made the job a disagreeable one generally.

On this point the company introduced an expert witness who was a consulting industrial engineer. The witness testified that after a survey of the premises he considered that the working conditions were better than those found in a typical machine shop. The matters of which the union complained were commonplace in industrial plants and the job as a whole could not be said to be a disagreeable one.

The arbitrator held that the second degree was applicable to this job, since the testers' work was performed under typical machine shop working conditions without any notably disagreeable features.

With the changes in the point rating resulting from reassignment of the various degrees, as noted above, the job of tester was found by the arbitrator to have a point score that raised it one labor grade above the one in which it had been originally classified. The arbitrator accordingly ordered that the rate applicable to this higher grade be paid to the testers.

RATES SET AFTER ENGINEERING STUDY

Reference was made in the preceding case to the use of a consulting engineer as an expert witness. Industrial engineers and engineering firms are quite often engaged to make technical studies and to propose findings when the entire rate structure of a department or a plant has to be reviewed. That was what was done in the case of a glass company and the glass workers' union (CIO) when a dispute arose over the proper rates to be established in the double glazing department at one of the company's plants.

First it was agreed between the company and the union that an

independent study should be made by an engineering firm, for the information of the arbitrator and for his assistance in setting new rates. The arbitrator was authorized to designate the firm to take this assignment. A conference was then held with participation by the arbitrator, the management and union representatives, and the engineers chosen to make the study. It was decided that the basis for the rate structure in the double glazing department should primarily be the rates paid for comparable jobs in other departments. The step-by-step procedure that was agreed upon read as follows:

1. The company is to prepare a list of all jobs in double glazing, determine and indicate with the union those jobs which are in disagreement. Jobs no longer performed are to be so indicated. Two copies of this list, signed by both parties, are to be provided to the engineers.

2. The engineers will then independently study the jobs to first prepare a job description covering all factors and elements of the job, interviewing such workers, supervisors, union representatives and examining such records as may be necessary.

3. The engineers will provide the appointed company and union representatives with copies of the preliminary job descriptions for the study.

4. The engineers will convene the representatives in not over two days for them to review the job descriptions submitted to obtain approval of the job description. Approval will be indicated by both parties initialling the engineers' copy of the job description.

5. In case of disagreement, the engineers with the appointed representatives will jointly restudy the job. Revisions will then be made as may be indicated by a restudy of the facts. In case the parties finally cannot agree, the engineers will submit, in the report to the arbitrator, a statement of the disagreement together with the findings of the engineers.

6. The engineers will then establish point ratings for each job to determine its relative worth to other jobs and determine its job evaluation rate. Comparable jobs in other departments not in dispute will be evaluated as a basis of comparison. The engineers' point ratings and job evaluation rates will be transmitted directly to the arbitrator.

When the engineers had completed their study the results were submitted to the management and the union. Both sides objected to certain phases of the engineers' recommendations. The comments and criticisms of the management and the union were transmitted to the engineering firm by the arbitrator with the suggestion that it make further analyses. Certain minor changes were then made in the engineers' report on the basis of the further information presented to them. The arbitrator then reviewed the final report of the engineers and made his own findings and award. He noted that a certain

pattern or trend line seemed to appear in the rates for four jobs in other departments that had been jointly agreed upon by the company and the union as jobs that should be used for a comparative basis. He further noted that the engineers had closely followed this trend line in fixing new rates for the jobs in the double glazing department. Then the arbitrator made the following comment:

The arbitrator has also taken into account the fact, as pointed out by the engineers, that "job evaluation techniques are merely aids to judgment and that judgments vary," and that job evaluation cannot be expected to be "mathematically precise." This is further supported by the company's admission and by the union's recognition of the fact that many of the existing rates are not "mathematically correct" on the basis of "true job values" or jobs upon which point ratings have been set.

The arbitrator determined it would be inadvisable to follow meticulously the rigid trend line by assigning individual rates to each of the jobs under dispute, and he therefore considered the various jobs in several reasonably related groups, which in his judgment will result in a more equitable set of rates.

The arbitrator then proceeded to establish rates which in most instances coincided with the ones recommended by the engineers which in a few cases were higher or lower than the proposed rates.

RATE EQUALIZATION BETWEEN DAY WORKERS AND PIECEWORKERS

If the contract permits wholesale wage reopening via the grievance procedure at any time during the life of the contract, it is to be anticipated that requests for rate adjustments will be made when any group of workers feels their rates compare unfavorably with those of other groups.

Two separate reasons for demanding wage adjustments to remove inequities were advanced by the employees of one department of a powder manufacturing company. On behalf of these employees, their union, the fireworks and munitions workers, (AFL), took to arbitration the question of what change, if any, in their earnings should be made.

Their first contention was that since they were engaged as mixers of incendiary explosives their work was extremely hazardous and put the men under great mental strain because of the fear of possible explosions. Secondly, they maintained that workers who handled the company's products after they had been processed in their own department, were engaged in jobs that were not anywhere near as hazardous, but still they received higher earnings under a

piece-rate system. The employees of the incendiary department were not on piecework and it was agreed by all concerned that no incentive basis for paying them was feasible.

The company challenged the union's claim that the work involved was extremely hazardous and contradicted the union's statements by presenting as a witness the company's own technical director, a man who had previously served for 25 years as an expert on explosives for the United States Army. He testified that the materials used in this particular department were not highly explosive, and that no greater hazard existed in that department than in any other department in the plant. The company expressed the view that the employees were motivated in asking for more money because of a serious accident that had occurred in their department the previous month. The management presented to the arbitrator a complete record of lost-time accidents during the prior eighteen-month period. This record disclosed that there had not been a single accident in the whole department throughout that entire period. It was further explained that the one accident that had happened during the previous month was of an extraordinary nature and it was most unlikely that there would be a recurrence of a similar type of accident.

As to the rates that were in dispute, the company pointed out that the employees in this particular department were generally unskilled but nevertheless they were paid higher rates than those received by skilled mechanics, because of the element of hazard in their department. It further explained that workers in other departments who were on incentive were receiving rates that were unusually high because some unsound piece rates had been fixed at a time when the company was most eager to expand its war production. These rates, the company maintained, should not be used as a basis for any upward adjustments of the rates for day workers.

The arbitration hearing on this case was followed by submission of briefs by both parties and then by further conferences between the arbitrator and the spokesmen for the management and the union. At one conference it appeared to the arbitrator that additional data should be compiled on the average straight-time pay of the employees involved in the dispute and of employees in other departments who worked on an incentive basis.

When all the data had been received, the arbitrator reached the

conclusion that the parties themselves had not yet exhausted the possibility of working out a proper solution of their own difficulties. He proposed as a temporary solution that the company and the union work out a plan for giving to the day workers in the incendiary department a proportionate share of the incentive bonus payable to employees on a piecework basis. He did this because it developed at the hearing that there was a direct inter-relationship between the workers of the two groups, even though the output of the former group could not be so standardized as to be paid for through a piecework plan. Note that the arbitrator made a recommendation rather than a decision. It was his hope and desire that through further direct negotiation an equitable arrangement could be agreed upon.

Three months later, however, at the request of both parties, another hearing was held. At that time the parties conceded they had been unable to agree on any mutually satisfactory plan. They accordingly requested the arbitrator to make an award. Further wage data were then made available to the arbitrator. These data indicated that the employees paid on an incentive basis were earning a bonus amounting to 42 per cent of their average base rate. Their average straight-time earnings amounted to 13 cents more than the day workers in the incendiary department. Because there was little or no difference in the skill and effort required for the two types of jobs, the arbitrator found that the day workers were entitled to an adjustment of 13 cents in their hourly rate, and ordered that this increase be put into effect.

IMPROPER CLASSIFICATION OF JOBS

The electrical workers' union (CIO) filed a grievance on behalf of a group of employees of a hardware company declaring that these employees were improperly classified and therefore were receiving the wrong rates at the time when a new contract went into effect. As presented to the arbitrator the question for his decision was framed as follows:

Were the persons named below (nine named individuals) properly classified on the effective date of the agreement and if not, are any of them to receive compensation in accordance with their individual proper classifications as of that date?

Union's claim All of the employees concerned in this dispute had been improperly classified as machine operators instead of set-

up men, the union contended. After the union had filed grievances in their behalf, during the same month that the contract went into effect, some six months elapsed while the cases were reviewed in various steps of the grievance procedure. Finally the management reclassified six of the employees as setup men. Three of the men had meanwhile left the employ of the company. The union argued that these employees were actually doing the work of setup men at the time when the contract was negotiated and should have received the rate for that job from that date on. They claimed retroactive pay for the six-month period before the company changed the classification of the six and also retroactive pay from the date of the inception of the contract to the date when they left, for three men who were no longer in the company's employ.

Company's position The spokesmen for the company insisted that up to the time when their job titles and rates were changed, the men concerned in the dispute were actually doing the duties of machine operators. Any setup work they performed was merely incidental to their jobs. Since they were not performing the regular and complete duties of setup men until their job classification was changed and the content of their jobs was changed, no retroactivity was warranted. As far as the men who had left the company were concerned, the management insisted they never had performed the duties of setup men and were obviously not entitled to any pay adjustment.

Arbitrator's decision The questions to be settled in this case were questions of fact rather than contract interpretation. Were any or all of these employees actually performing the jobs of setup men during any or all of the period under review? The arbitrator held that the evidence indicated that six of the employees were actually doing the job of setup men on and after the date when the contract went into effect. For these men he awarded a retroactive adjustment, representing the difference in the pay between the rate they had received and the higher rate for the setup man's job. One of the three who had quit was found by the arbitrator to have been doing a machine operator's job and not a setup man's job. This man, the arbitrator ruled, was however entitled to a Class A rate for machine operator rather than the rate he had been receiving and he was thus awarded retroactive pay on the basis of the higher rate for the Class A job. The other two employees who had quit were found by the arbitrator to have been performing the duties

of the job in which they were classified and had not been doing the job of setup man. No retroactive adjustment was ordered for these two.

EQUAL PAY FOR EQUAL WORK

The greatly increased use of women during World War II on jobs formerly performed exclusively by men gave rise to many disputes as to proper rates for women doing all or part of men's jobs. Quite frequently the disputes were settled by contract clauses in new agreements specifying that there should be equal pay for equal work. In other cases where women did part but not all of the men's jobs, contracts often provided a proportionate amount of the rate to be payable to the women. But still disputes could and did arise as to whether or not a woman in fact was completely performing the job which had always been done by a man.

The contract in effect between a chemical company and the electrical workers' union (CIO) contained the following clause:

Female employees assigned to the same operation, which has been or which is performed by men, shall receive the same pay when they produce the same quality and quantity of output.

The question submitted for arbitration involved a determination as to whether or not two women were actually doing the full job previously assigned to men in sizing dies. The union pointed out that for a considerable period of time the die-sizing work had been performed by a team consisting of one man and one woman, the woman in the main assisting the man and receiving a lower rate. Then when the management put a woman on the job that had been always performed by the man with the aid of a woman helper, the new team did all of the work involved in the operation, with one single and slight exception. The only exception was that the woman was not required to truck materials to "finished stores," a task which had taken the male operator no more than ten to fifteen minutes a day.

Calling attention to the contract clause quoted above, the union insisted that each of the women who had been assigned to the work previously done by the male half of the team should get the full rate that the men on this job had been receiving.

The company had an entirely different story to present to the arbitrator. Its spokesmen pointed out that many months earlier representatives of the company and union had met and negotiated

rates which were to be paid to women employees who might be used to replace men on various jobs throughout the plant. On the die-sizing job it was agreed at the time when women replaced the male operators that the new team of two women (instead of one man and one woman) could perform only 91 per cent of the total job. Accordingly it was further agreed that the rate for the woman who took over the man's assignments would be only 91 per cent of the contract rate for the male operator. The company further explained that at the time this special agreement on rates was entered into, an understanding was reached to the effect that further adjustments would be made in the women's rate if and when it could be established that they were performing all or a greater percentage of the work assigned to men. It was not until nearly two years later and nearly nine months after the women ceased to perform the man's job that the union filed its complaint. Apart from the undue delay, the company contended that the rate itself had been established by an agreement which was embodied in the contract and therefore was not subject to arbitration.

Arbitrator's decision As is the usual custom whenever the company permits and the union desires, the arbitrator carefully observed the job under consideration and obtained all essential information as to how the work was done when performed by teams consisting of one man and a woman and thereafter by teams composed of two women. The arbitrator concluded that the union had failed to establish a case. In other words it was unable to demonstrate that when a team of two women was used on the job they had actually performed more than 91 per cent of the total work that was done by a team of two men. Hence he ruled that no adjustment was in order for any of the women who had assumed the male role on the team.

The arbitrator had a further and most significant point to make. In his decision he commented that the union had had ample opportunity at any time during a period of more than a year to protest the rate paid to the women assigned to the part of the job that had formerly been done by men. Had the union done so, the arbitrator pointed out, the company would have been given the opportunity either of convincing the union that the work load of the female workers was sufficiently lighter than that of the male employees to justify the rate differential, or the company would have modified the work load sufficiently to make it conform to the estab-

lished rate. The third possibility would have been for the company to pay the full rate to the women until it could be demonstrated that they could not do the entire job of the male part of the team. In rejecting the union's claim for any rate adjustment, the arbitrator gave a further explanation as follows:

The arbitrator is of the opinion that to permit the reopening of the wage rate at this time, after the discontinuance of the performance of the work by women employees, and after the failure by the union to complain of the rate during the entire time when the work was being performed by these women, would be more likely to set a bad precedent which would cause more instability than any possible benefit that might accrue to the few workers involved, even if it became apparent that the allowance made in the differential between the women's and men's rate was somewhat excessive.

RATE INEQUITIES BETWEEN TWO PLANTS OF SAME COMPANY

Under a contract which permitted processing of wage disputes through the grievance procedure whenever any alleged inequities developed, a case arose in which the union contended that the rates for a certain type of operators in one plant had become out of line with the rates for the same type of operators in another plant of a company engaged in manufacturing iron and steel products. The union was the steel workers (CIO).

Specifically, the union contended that the rates paid in the hammer shop of plant A were substandard compared to the rates paid in plant B. Both plants were located in the same state. In support of its contention, the union pointed out that the men in the hammer shop at plant A had been producing considerably over and above the normal expected output since their rates had been reviewed and adjusted some months earlier. Currently, the union argued, the output of the men in plant A had at least reached the level of output at plant B.

The company's position in the main was that no evidence had been presented by the union and no evidence could be produced to demonstrate that there had been any change in working conditions at plant A after the effective date of the current contract. Accordingly, so the company spokesmen argued, the union had no justification in seeking an upward wage adjustment on that score. The management further contended that whatever differentials existed between the two plants were the result of different working conditions and these existed at the time the contract was executed.

Before reaching his decision the arbitrator, with the consent of both parties, called upon a technical assistant of the United States Labor Department to investigate the actual working conditions in both plants. This investigation disclosed that although the two plants had similar products, few of the finished products were identical in every respect. He further found that working conditions varied substantially at both plants because of differences in layout, of equipment, and of other physical facilities. He finally ascertained on the basis of examination of production records, that the men at plant A were not doing any appreciably greater volume of work than they had done at the time when their present rates were established.

Upon reviewing the findings of the technical expert and considering all the evidence, as well as the contract clause involved, the arbitrator ruled that he had no basis under the contract to order a change of rates since the evidence indicated unmistakably that there had been no substantial change either in the working conditions or in the quantity of output of the employees involved in the dispute.

INTERCOMPANY INEQUITIES

A somewhat unusual case arose in a plastic producing company, the employees of which were represented by the electrical workers' union (CIO). Here both parties had agreed on the general over-all adjustments in the rate structure. They were unable to agree, however, on specific rates to be set for employees in two departments of the plant. Finally, with respect to these rates they did agree to have an arbitrator fix them in accordance with the rates paid for comparable jobs by other plants in the same general area. The union and the company cooperated in obtaining the current rates for the same types of jobs in other concerns in the area. They left to the arbitrator full and complete discretion to decide, after examining the data produced by the joint survey, exactly what rates should be applied to the jobs in the two departments concerned.

Here was an instance where the arbitrator's decision was to be confined to a review of undisputed factual data. The data consisted of average rates paid by a group of firms for specific operations, as well as the individual rates paid by each concern. It would be of little interest to recount here the rates finally determined by the arbitrator as appropriate for the operations in the two departments.

This case is cited merely as an illustration of a suitable method for settling a rate dispute where the facts are not in question, but rather where the application of the facts to a particular situation cannot be agreed upon by the union and the management.

CONTRACT CLAUSE PROVIDING FOR A
COST OF LIVING ADJUSTMENT

Many contracts entered into in the early 1940's had specific provisions for the reopening of the wage clauses in the event of a rise in the cost of living. The inflationary situation which has developed since the end of World War II conceivably might lead to the adoption of similar clauses in a considerable number of new contracts. An actual prewar case illustrates what may develop when a dispute over the interpretation of such a contract clause gets to the stage of arbitration proceedings.

A cut sole concern and an independent union representing its employees became involved in a dispute as to the justification for the union's demand for a wage increase to offset the advance in the cost of living. The union made its demand for a wage adjustment three months before the expiration of the current contract. This expiration date was December 1, 1941. In support of its demands, the union cited three points: (1) the "terrific" increase in cost of living between September, 1940 and September, 1941; (2) the fact that other manufacturers in the community had granted wage adjustments averaging 10 per cent because of the rise in cost of living; (3) the improved profit position of the company, which would make it easily feasible for it to grant a 10 per cent increase immediately.

On the other hand the management insisted that the contract be lived up to completely and that under the contract no wage adjustment could be ordered by the arbitrator. The current contract had a clause to the effect that wage rates could be reopened "only in the event that the cost of living as shown by the 'cost of living index' of the Bureau of Labor Statistics of the U. S. Department of Labor, advanced by 10 per cent from the level prevailing at the time the present contract was signed." The company spokesmen insisted that all other arguments were irrelevant and should be disregarded by the arbitrator.

The facts as to the actual rise in cost of living as revealed by the Bureau of Labor Statistics index spoke for themselves. The per-

centage of increase was substantially less than 10 per cent during the period in question.

Hence the arbitrator was bound by the language of the contract itself. The union could not dispute the arithmetic involved in the issue. Since the Bureau of Labor Statistics index of cost of living had not risen by 10 per cent, the union's contention had no validity under the express terms of the contract. The arbitrator therefore denied the request of the union for an immediate adjustment in wages. He pointed out that the only time such an adjustment could be properly considered would be when the contract expired three months later.

ARBITRABILITY OF DISPUTE OVER JOB CLASSIFICATIONS

The findings and awards of arbitration tribunals may themselves be subject to further arbitration proceedings after the awards have been embodied in a contract, particularly when the resultant contract language is not clear-cut and specific. It does not matter whether the award was the result of an arbitration case where the company and the union agreed of their own volition to have the matter decided by a third party, or whether the arbitration was the result of government intervention, as so often happened during World War II.

A case in point is one where a dispute arose between a shipbuilding corporation and the marine and shipbuilding workers' union (CIO).

The union insisted that twenty-four men who had the title of "testers" were actually performing the work of "specialists" and should receive the specialists' rate of pay. The rates for both of these job classifications had been fixed under an order of the Shipbuilding Stabilization Commission, an adjunct of the National War Labor Board which had the same authority to settle disputes in the shipbuilding industry as did the War Labor Board for most types of industries engaged in war production.

The company insisted that the question raised by the union was not arbitrable. In support of its position it argued that the rates for testers and specialists had been determined by the Commission and inserted in the contract. Accordingly, there was no basis for increasing the rates of any of the testers to the higher rates provided for specialists. The union countered with factual evidence of a most impressive nature. It presented a list of duties which certain testers

were called upon to perform. These particular testers were among other things held responsible for the proper functioning of all machinery after installation. They not only had to inspect the machinery but also to make adjustments and repairs. Accordingly, since these phases of their duties involved the work of specialists, the union insisted that the men be classified as specialists and get the rate of the latter job classification.

The dispute between the management and the union was presented to a board of arbitration in the form of two specific questions: (1) Is the contention of the union that the twenty-four men having the title of testers should be designated as specialists and receive the specialist rate, an arbitrable matter under the existing contract; and (2) If the board of arbitration should determine that the foregoing question is arbitrable, what then should be the job classification and the rate of pay of the twenty-four men presently designated as testers?

While a board of arbitration was provided to hear this dispute, the terms of submission vested in the impartial chairman authority to make a final and binding decision.

The impartial chairman ruled as follows: (1) The matter was arbitrable, for under the terms of the contract any dispute as to whether or not an employee's duties actually brought him within one or another of the job specifications set forth in the contract, could be taken up under the grievance procedure. (2) The previous decision of the Shipbuilding Stabilization Commission merely set the rates which had to be paid for persons actually performing the duties of testers and higher rates for persons actually performing the duties of specialists. (3) It was not within the province of the board of arbitration to decide in which classification any group of employees should be put by virtue of the nature of their current duties and responsibilities. (4) It was apparent from scrutiny of the Shipbuilding Stabilization Commission award which was embodied in the contract, that this order did not tend to preclude testers from being designated as specialists, should it be found that the duties of all or some of them entitled them to be classified as specialists.

The chairman of the board of arbitration accordingly ruled that all of the testers who were then performing the unusual types of independent work that was normally done by specialists should be classified as such and paid the current rates for specialists.

ARBITRABILITY OF PERSONAL RATES

If a contract permits taking up through the grievance procedure any disputes as to alleged inequities between the rates received by two or more individual workers, then it is possible to bring to arbitration questions arising because one employee thinks he is underpaid in relation to the rate of another employee doing similar work.

The textile workers' union (CIO) took to arbitration a grievance of a steamfitter employed by a cotton fabricating concern. The union's case was presented very simply. The steamfitter, Mr. L., was doing the identical work and had the identical responsibilities of another steamfitter who was receiving a rate $3\frac{1}{2}$ cents in excess of Mr. L.'s rate. Mr. L. had been employed by the company for three years, and having been engaged for twenty-seven years in the same trade, was a thoroughly experienced steamfitter. Accordingly there was no reason why he should not be paid the same rate as the other steamfitter.

The company's contention was equally simple. The steamfitter getting the higher rate, namely Mr. M., had been in the employ of the concern for a much longer period. He was regarded as the "gang boss," or group leader. The master mechanic gave to Mr. M. all orders involving steamfitters' work and he was on call at all times. In view of Mr. M.'s greater responsibilities, a wage differential of at least $3\frac{1}{2}$ cents was completely warranted.

The union presented rebuttal testimony which tended to indicate that Mr. L. and Mr. M. were capable of doing and actually did do the same work on an interchangeable basis. In the light of this rebuttal testimony, the arbitrator concluded that Mr. L. was entitled to have his rate increased by $3\frac{1}{2}$ cents an hour and he issued an order to that effect.

RATE REDUCTION NOT PERMISSIBLE
UNDER MERIT RATING PLAN

Where the union and the management write into the contract a plan providing for rate adjustments on a merit basis, such a plan cannot be used as justification for rate cuts, if there is no specific clause authorizing rate reductions. That was the conclusion reached by a board of arbitration in a dispute between the CIO electrical workers and the management of a machine tool manufacturing company. The nature of the contract clause, as well as the facts elicited

in the arbitration hearing, are of unusual importance and warrant review in some detail.

Question at issue The question submitted to a board of arbitration was formulated as follows:

Does the company have the right under Section 5 of Article VI of the contract to reduce the hourly rates of five named employees or any others after an employee rating review.

The section of the contract referred to above read as follows:

The company shall continue its policy of making individual adjustments in line with the efficiency and skill of individual employees. The formulation and administration of the job evaluation system are solely the functions and responsibilities of the company. The classification of jobs under the job evaluation and the grading of individual employees are the subject matter of grievances to be dealt with under the grievance procedure.

Union's contention According to the union the management had improperly invoked the individual adjustment clause quoted above as giving it justification for reducing the rates of pay of a number of employees who had continued to perform the same types of work that they were doing at the time the contract was negotiated.

The union rested its case solely on the basis of its interpretation of the contract language. In so doing it sought to interpret and explain the purport and meaning of each of the three separate sentences in the contract provision which was quoted above. With respect to the first sentence the union was certain that it must be construed in the light of the background and experience of the parties in their relation with each other and also in the light of the company's statement to the union and all of the employees in a letter issued prior to the signing of the contract. In this letter, the union pointed out, the company had referred to its right to make individual adjustments on the basis of efficiency and skill as involving up-gradings only. The whole history of previous management-union relations, moreover, demonstrated that the intent of this particular sentence was to give the company the sole right to decide when increases should be made and not to authorize any rate decreases.

The second sentence, the union maintained, was intended to refer only to the system for job evaluation which was in effect at the time the contract was signed and to guarantee to the manage-

ment the right to fix new job rates including the "up-grading" of employees when their responsibilities were substantially increased. This sentence, the union insisted, contained no reference or implication with respect to any down-grading of employees and therefore it would be obviously counter to the intent of the contract for the company to review the work performance of any employee for the purpose of reducing the rate he received at the time the contract was signed.

The third sentence, the union argued, definitely had reference only to complaints concerning up-grading, as no down-grading within the same job levels was ever contemplated or authorized under the contract or ever referred to by the company in its own pronouncements to its employees.

In summary the union therefore urged that the arbitration board should hold that there was no authorization for the company under the contract to reduce the rates of any employees by changing their hourly rates within the same job levels in which they had been placed by the company in accordance with its own job evaluation plan.

Company's position As might be expected, the company put an entirely different construction on the section of the contract cited by the union. With reference to the job evaluation plan, which in the second sentence was conceded to be the sole function of the company to administer, the management stated that two main factors were to be considered in determining the rates which employees should be paid: (1) What does he do? (2) How well does he do it? In applying the job evaluation plan, each employee was rated by the company on certain factors such as output, quality, and so forth. The score which the employee received on his job performance determined the hourly rate assigned to him.

Referring to the contract language authorizing the company to make "individual adjustments in line with the efficiency and skill of individual employees," the company insisted that this indicated its right to make adjustments up or down in accordance with the improvement or the recession of the efficiency and skill of individual employees.

Finally, the company spokesman contended that the only question that the board of arbitration was authorized to construe and apply under the section of the contract previously referred to, was whether the company had the right to take appropriate action in

the form of a rate reduction when an employee for one or several reasons might become less efficient and skillful in his job.

Findings of board The nature of the submission to the board of arbitration was such as to limit its discretion to matters of contract interpretation. In so doing the board had to review all relevant evidence, including a bulletin issued by the company while contract negotiations were still under way. That bulletin summarized for the benefit of the employees the job evaluation plan which the company was insistent on including in the contract. The bulletin expressly declared that "no individual will receive a cut in pay as the result of the installation of this system."

The arbitration board noted that nothing contained in the company's bulletin disclosed any reference to the reduction of the rate of any individual who was performing the duties of any particular job. The board went on to say:

There is a general acceptance of the practice that if you include an item specifically, by inference you exclude all others. In other words, the inclusion of up-grading by the company, and the failure to refer to the possibility of down-grading within the same level, and the further assurance that "no individual will receive a cut in pay as a result of the installation of this system," leads to the only conclusion that it was not the intent of the company to cut anyone's wages so long as he remains on his present job level occupation.

The board is of the opinion that the "formulation and administration of the job evaluation system, [which] are solely the functions and responsibility of the company," must be considered in connection with the responsibility assumed by the company in its job evaluation pronouncement in the pamphlet and the letter to the union which followed it, which together formed the basis for the understanding which was reached by the union when the contract was entered into.

To read any additional meaning into it would, in the board's opinion, be in violation of Article VIII, which states in part:

"There shall be no power to add to, subtract from, or modify this agreement, or to establish or change any rates of pay or wages."

Consequently, the board of arbitration ruled that in view of the contract language and explanations of the company referred to above, the company could not down-grade any employee so long as he remained within the same job grade in which he was placed by the company in accordance with its job evaluation and employee rating plan in effect at the time when the current contract was negotiated and accepted by both parties.

MERIT INCREASE BECAUSE OF ADDITIONAL DUTIES

The contract negotiated by the steelworkers' union (CIO) with a railroad equipment company provided for review under the griev-

ance procedure of claims for merit increases based on assignment of additional duties to employees.

The union contended that Mr. L. was entitled to a merit increase to the maximum of his job grade because he was currently assigned to breaking in, instructing, and supervising planer operators. Mr. L. had been employed by the company for twenty-five years and for a year previous to the time when the dispute arose, had been classified as an "AA planer operator." His rate on this job was 5 cents below the maximum of the job grade. This rate was given to him before he had been assigned to his instructional duties. The union urged that he was entitled to the maximum of the job grade because the company had tacitly admitted his superior qualifications by assigning him to instruct other employees in the duties to be performed by Class AA operators.

The company disputed the union's contentions. Its spokesman argued that Mr. L. had never actually been qualified to perform the duties of AA planer operator. Actually, he was and had always been a Class B planer operator but had been given the AA classification because of his assignment as an instructor of B operators. The company further asserted that the chief reason for his current classification was that there was no job title in existence that met the specifications of the work performed as instructor for B operators. Being desirous of granting Mr. L. an increase, the management had given him the AA classification just as an expedient.

Moreover, the company asserted that there was no longer a need for him to give instruction to Class B operators and therefore it would be illogical and improper to give him the maximum of the Class AA rate range, since he himself had not established unusual proficiency as an operator in either category.

The arbitrator was more impressed by the evidence and arguments presented by the union than those advanced by the company. He reached the conclusion that the qualifications and performance of Mr. L. were of such a nature as to warrant his receiving the maximum of the rate range for a Class AA operator. The company's action in giving him a rate 5 cents below the maximum of the range and his performance as an operator and as an instructor, together with his great length of service, merited his advancement to the maximum of the range. The arbitrator thus ordered that he be paid the top rate for the range effective as of the date when the union filed the grievance.

8. INCENTIVE PAY DISPUTES ARISING UNDER CONTRACT

There was a time when the expression "piecework" was anathema to most union leaders. "Piecework" was regarded as synonymous with the "speedup." When unions generally opposed any incentive-pay system arbitration cases on this point were largely confined to opposition on the part of union leaders to the introduction of incentive rates under any or all circumstances.

Today the situation is entirely different. Thousands of contracts have express provisions governing the terms under which jobs may be put on an incentive basis and also controlling the methods to be used in setting piece rates. Often a union will protest the refusal of management to put a given job on an incentive basis. Even more often it will challenge the adequacy of the rates set for a particular job.

Invariably when disputes over piece rates arise under union agreements the cases have to be decided on the basis of investigation of a complicated set of factual conditions. Rarely is it possible to decide the issue merely by reviewing and interpreting the contract language itself. As was mentioned in Chapter II, an arbitrator who is designated to adjudicate cases involving disputes over piece rates has to have or quickly acquire an intimate knowledge of the processes and products involved. In no other type of case is it so essential to make available to the arbitrator all the detailed factual information surrounding the operation in question, the working conditions involved, and the methods used in establishing the disputed rates.

It happens that the bulk of the cases summarized in this chapter arose in either the shoe or the textile industry. That is because in both of these industries piecework methods for paying workers have been generally accepted by both management and labor over

a long period of time. But the factors and the principles utilized in the arbitrator's decisions on these cases are in most instances equally applicable to nearly all other types of industries.

RIGHT TO CHANGE FROM DAY WORK TO PIECEWORK

The textile workers' union (CIO), who represented the employees of a worsted mill, took to arbitration the following questions:

1. Should the plan of converting from hourly work to piece work in the heavy drawing department, with the accompanying work load and rate proposed by the company, be maintained or modified?
2. If modified, what is the work load to be?
3. What is the base rate to be on which the piece rate is to be set in accordance with the applicable provisions of the contract?

There were provisions of the contract which reserved to the company the right to direct the working force and to determine how many employees should be assigned to a given operation.

In the course of the hearings on the case evidence was presented both by the management and the union that led to the necessity of further review of the respective positions of both sides. A considerable amount of rebuttal testimony was presented and at one stage the parties endeavored to settle the dispute through compromise. Finally, however, when a mutually satisfactory solution could not be worked out it became necessary for the arbitrator to make findings and issue an award. The significant developments in the presentation of the case are summarized below.

Company's original position On each of the sets of machines in the heavy drawing department six operators had been employed. Their rates had been fixed on an hourly basis. The management decided it would be advisable to convert this work to a group incentive-rate basis and to reduce the number of operators per set of machines from six to five. The management insisted that it had the right under the contract to convert from an hourly base rate of pay to an incentive basis so long as it adhered to the contract clause requiring it to set piece rates on such a basis as to enable experienced workers to earn 12 cents above the guaranteed day rate. The group incentive rate established for the operators involved in the dispute did in fact, according to the company, enable them to earn at least 12 cents above their base rates. Moreover, the company argued, in setting the group incentive rates for these operations it had gone beyond the obligations of the contract and had

provided for a base rate of 5 cents more than required by the contract.

Original contention of union Initially the union took the position that it had no objection to a changeover from an hourly rate of pay to an incentive basis but its officials wanted to be assured that there would be no excessive work load imposed on the employees as a result of the changeover. Its spokesmen, however, maintained that the base rate on which the incentive earnings should be computed should be established on a level 10 cents higher than that fixed by the company. They asserted that other mills in the same area paid this higher base rate for a job requiring the operation of a smaller number of spindles. At that point the union requested an adjournment to obtain further information and, upon agreement by both parties and the approval of the arbitrator, a second hearing was held a month later.

After further review of the situation the union contended that the piecework plan introduced by the company in its heavy drawing department was unquestionably an innovation in the industry. Ordinarily this work was paid on an hourly rate basis. The union raised an objection to the effect that under the company plan individuals were not compensated for their own personal efforts. Rather, their pay was based on the combined efforts of a group of employees. Accordingly the union pointed to the desirability of establishing a piecework plan under which each individual would receive full compensation for his own effort.

As an additional point the union brought to the arbitrator's attention the fact that some of the operators frequently had to wait for work in process, their own output depending upon the rate of production of fellow employees within the group. The union contended that during such periods of waiting time the employees were entitled to at least their base rates and the company was not conforming to its contract obligations but rather was failing to pay these employees anything for waiting time.

Finally, to support its general contentions, the union pointed out that formerly six workers assigned to this operation had received a total of \$4.50 per hour while currently under the adjusted rate structure the five employees assigned to the operations received a total of only \$4.00 an hour, and at the same time the output of the five was exceeding the output of the six employees who had previously been assigned to this operation.

Further contentions of company In rebuttal the company again referred to the contract clauses which enabled it to determine how many employees should be assigned to a particular operation. The management also produced evidence indicating the six workers had been operating at only a rate of 52½ per cent of proper efficiency. There was also evidence introduced showing that each of the workers had sufficient spare time to render occasional assistance to other operators. Then too, to refute the union's contention that the company's plan was unique in the industry, the management produced evidence showing that several other mills in the area had incentive plans in their heavy drawing departments similar to the plan adopted in this particular mill.

Subsequent developments With the consent of both parties the arbitrator visited the mill accompanied by representatives of both sides and observed the operations in actual practice. During this visit the arbitrator was informed by the management of its desire to make a further change in the work assignments of the heavy drawing department. New equipment had just been received. This had been on order for a long period and its arrival could not be anticipated at the time of the original changeover from an hourly rate to a piecework basis for compensating the employees. With the availability of the new equipment, the company thought it feasible and desirable to reduce the current working crew from five to four employees, a further change in work assignments that eliminated two employees instead of the one. It was the elimination of one employee and a changeover to an incentive basis that had given rise to the original dispute. Since the union protested this proposed action by the management a new dispute developed which the parties were entirely willing to have decided by the arbitrator.

Under the new conditions and with the new equipment to be operated by four operators instead of five, the company proposed a group-incentive plan which would allow incentive earnings of approximately 22 per cent over the base rate that it had established. The net result would be to advance the earnings of each member of the group by 5 cents an hour.

The union gave general acquiescence to the proposal of the company for maintaining the operation on a four-man crew for each set of machines, provided no job displacement would occur. During the arbitration proceedings the company assured the union that the displaced workers would be given jobs in other departments

in the mill. The union went along with this arrangement but solely on the condition that the base rate set by the company be increased by some 15 cents per hour.

Arbitrator's decision In view of the changed positions of each party that developed during the arbitration hearings, the issues in dispute were decidedly narrowed down by the time the arbitrator had to make his findings and render an award. First he held that under the contract the company was indubitably entitled to change from an hourly rate to a piecework basis of paying employees in the heavy drawing department. He further ruled that because of the utilization of new and improved equipment the company was justified in utilizing a crew of four employees per set of machines instead of six as had originally been utilized, or five, as had been employed on the operation after the piecework system was put into effect.

With respect to the question of the base rate and the proper yield from the incentive allowance, the arbitrator ordered that the base rate be increased by 15 cents as requested by the union but that the incentive allowance be reduced from 22 per cent as fixed by the company to an 18 per cent yield. In other words, the arbitrator concluded that the union's contention for a higher base rate was entirely in order but at the same time felt that because of his award of a greater base rate the union was not entitled to have its employees receive as high an allowance in incentive earnings as the company was willing to pay if the 15-cent lower base rate were to remain in effect.

RATE ADJUSTMENT WARRANTED BECAUSE OF USE OF DIFFERENT MATERIALS

A raincoat manufacturing company was unable to set to the satisfaction of the union the piece rates to be paid for various operations that had to be performed in the production of army raincoats. The union representing the employees, the ladies' garment workers' union (AFL), took the matter to arbitration.

In accordance with the contract provisions, the management itself first set the rates on the items going into the production of a new type of raincoat. This was a so-called "Buna-coated" raincoat which was being produced in large quantities for the United States Army. In fixing the rates, the management calculated that the estimated output of the workers on each of the jobs would be such as to yield

appropriate average hourly earnings in accordance with the skill and effort required. The "Buna-coating," being a form of synthetic rubber, was a new substance, in the sense that the employees had never previously handled it. This material was softer than other coatings that had been used on other types of raincoats. Therefore special care had to be exercised in handling it. Nevertheless, the union pointed out, the company had set the rates for the coating operations on the same basis as had been used in determining the rates for production of resin-coated raincoats. Accordingly the union insisted that there be an upward adjustment of the piece rates in all operations involving the handling of the Buna-coated material.

The company urged that there were other factors that more than offset the disadvantage from the use of the Buna material. In this particular type of raincoat, the cutting and spreading operations were less difficult. Hence if anything, a downward adjustment of the piece rates was warranted. Indeed, the company maintained, it had set the rates for the new type of raincoat on the basis that would actually enable the workers to attain a substantial increase in their output, and consequently in their earnings.

For the guidance of the arbitrator, both the union and the management submitted to him complete analyses of all of the operations involved in the manufacture of the two different types of raincoats. Both sides requested him, in reaching his decision, to observe the principles that no loss should be sustained by the operators who had previously made raincoats with the resin covering, while they were making the Buna-coated garments. To reach a proper conclusion, the arbitrator had to examine and evaluate some fifteen different operations. As a result of his studies, he ordered slight adjustments in the rates of each of these. The result of these adjustments, which were embodied in his formal award and decision, was to enable the employees to maintain substantially the same earnings on their new assignment as they had received while working on the resin-covered raincoats.

PIECE RATES ADJUSTED ON BASIS OF COMPETITIVE CONDITIONS

At a time when piece rates and earnings of employees were undergoing rapid changes because of the entrance of most of the companies in the area into the field of war production, the textile workers' union (AFL) sought an upward adjustment in the piece

rates of the weavers employed by a blanket manufacturing company. The contract then in effect permitted submission to arbitration of any disputes regarding piece rates, irrespective of the reason. For manpower reasons, i.e., to prevent excessive turnover among their employees who might be inclined to take jobs in concerns paying higher rates, the management was entirely willing to let the matter be decided by an arbitrator. It agreed with the union to submit the following question: "Should the piece rates of the weavers be adjusted upwards if a survey of the piece rates paid by comparable mills, a list of which has been jointly selected by both parties, reveal higher rates than are paid by this company?"

The union and the management jointly selected seven different mills in New England which were producing identical items at the time when the dispute arose. At their request the arbitrator arranged to have a rate study made by a member of the technical staff of the United States Conciliation Service. The results of this study were submitted to both sides, as well as to the arbitrator, and an informal hearing was held to review and discuss the facts revealed by the study.

It developed at the hearing that the piece rates established in the seven other mills were on the basis of the number of "picks," while at the company concerned in the dispute the rate was established on a "per yard" basis. Accordingly, there was no accurate means for establishing the extent of the inequalities, if any. Company spokesmen conceded that its weavers had been handicapped to some extent because of poor runs of yarn, but that some improvement had been made and ultimately this difficulty would be overcome. Even with the improvement in the raw materials, it appeared that the current earnings of the weavers would be somewhat less than those of the workers employed by other mills.

To bring about a partial lessening of the inequities and not handicap the company because of unavoidable production difficulties, the arbitrator ruled that the weavers involved in the dispute should have their piece rates increased by 6 per cent.

PREEXISTING DIFFERENTIAL NOT RESTORED

Shall the union's request for an upward adjustment in the rates of reducer tenders be allowed?

This question was the issue in a dispute between a woolen mill and the AFL union of textile workers. In accordance with the

contract, it was submitted to arbitration, when the union claimed that an unfair differential existed between the "reducer tender" job and that of "speeders" in the mill.

Union's claim The union demanded that a greater differential be established between the rate for "reducer tenders" and that of "speeders." It claimed that the existing rate for reducer tenders, which was only 4 cents greater than the speeders' rate, was not commensurate with the difference in work loads for the two jobs. Since the reducer tenders were required to do "setting" and "doffing," the union considered these two duties an extra work load calling for an increase in the base rate per set, and in the base rate per doff.

In other mills in the area, the union pointed out, reducer tenders were not required to do any setting or doffing. While the base rates at other mills averaged 10 cents an hour less than those of the company in question, still their rates were proportionately higher because the work load was so much lighter.

Another factor cited by the union as having upset the differential inequitably was the granting of a specific increase to the speeders the year before, when no increase was granted for the reducer tenders. This, in addition to a general increase prior to that, put the two rates entirely out of line.

So the union requested the arbitrator to order that the rates per set and per doff be increased to yield \$2.50 more per week in the reducer tenders' earnings, which amount it considered a justifiable increase for the workers concerned.

Company's side The company maintained that the work load requirements for reducer tenders had not been changed for a long time, and that the operators had never complained of any overload. It cited a union grievance of the year before that had resulted in a survey being made of the speeders' job, and an increase having been granted to the speeders. Although this had lessened the spread between the two jobs, the company did not believe that the differential should be further disrupted, especially since a further slight adjustment in the reducer tenders' rate that had been offered by the company had been rejected by the union.

As for the difference in work load between the reducer tenders in this company and in other mills, the company stated that the methods at other mills varied, making it difficult to compare them at all. And since the actual earnings of the employees of the mill were substantially in excess of the prevailing hourly rates, the com-

pany did not consider it either necessary or fair to make the comparison.

Furthermore the company was greatly concerned over a further inequity that would surely be created in the mill if the reducer tenders' rates were adjusted upward and made higher than the "slubbers'" rate. This latter rate had always exceeded that of the reducer tenders.

Arbitrator's finding As the arbitrator saw the problem, there were three phases that had to be considered separately. First, there was the prevailing practice at other mills, which the union contended should form a basis for granting an increase. The arbitrator concluded that it would not be fair to either side to find that the company's rates were inequitable without first making a complete analysis of the reducer tenders' job as it was performed at other mills.

Secondly, the arbitrator disposed of the question as to whether an adjustment in the reducer tenders' rate would upset the general increase granted throughout the mill some time ago. This adjustment, he stated, should have no bearing whatever on any other rates. The only "rub" was the differential between the reducer tenders' and speeders' rates, which had been lessened by the granting of an increase to the speeders.

This led to the third phase of the case: Should the rate of the reducer tenders be adjusted upward, so that they might be kept in the same relationship to the rate of the speeders which prevailed prior to the granting of the increase to the speeders? The arbitrator found the union to be fully justified in its request. He ruled that the single rates for setting and for doffing should be raised in such proportion as to enable the reducers to maintain the 61½-cent differential that had existed between theirs and the speeders' rate prior to the granting of an increase to the speeders.

RATE CHANGE ON CHANGE OF WORK ASSIGNMENTS

The good faith of the management in making rate changes when there has to be some variation in methods, materials, or finished products is often called into question by the union. However scientific and thorough the process of rate setting may be, it is not surprising that the union will question either the good faith or the accuracy of the rate-setting job when the result is a reduction in employees' earnings. The following case is typical of disputes that

develop when rate changes happen to produce lower earnings. The specific question for arbitration as formulated by the textile workers' union (CIO) and the management of a worsted mill was: "Do the present earnings based on the new piece rate work for '38's' result in an unjustifiable reduction from their previous earnings, and should the new rate enable the 'doublers' to maintain their previous earnings."

In this instance the contract was specific in setting forth the general basis for establishing new piece rates. The contract read: "There shall be a minimum guaranteed wage for all piece rate jobs, and piece rates shall be so set that the experienced workers shall be able to earn 12½ per cent above the guaranteed day rate."

The dispute arose when a group of employees known as "doublers" were reassigned to work on "38's" yarn instead of "40's" yarn. The rate set for the new type of yarn was considerably lower than the rate on the original type. The result was that the doublers suffered a decrease in average hourly earnings of more than 10 cents per hour. Contending that the nature of the work was such as to justify a piece rate which would produce practically identical earnings on either type of yarn, the union demanded an equivalent adjustment of the piece rate for doublers working on 38's.

The management explained in full detail to the arbitrator the methods it had used in establishing the new rate and insisted it had complied completely with the contract requirements. Its spokesmen urged that the arbitrator should disregard the union's contention as to the apparent disparity between the new rate and the rate set for work on 40's. The latter rate, the management contended, was a "pressure rate." The management went on to point out that the rate originally set for doubling 40's was done without an accurate time study. The union had objected strenuously to this rate because before it had been put into effect a very loose rate had been in operation and the earnings of the doublers were much above normal. Because of the union's protest and in order to avoid a work stoppage, the company made a further concession by reducing the expected output per week, thus markedly increasing the rate per 100 pounds. After the revised rate was put into effect because of the unusual conditions and the threat of a stoppage, the management found that the incentive earnings of the workers averaged 47.5 per cent above their base rate. This was in striking con-

trast to the contract requirement of incentive earnings of only 12½ per cent above the base rate.

Finally the management pointed out that when it changed over to production of 38's it had the right and duty to set a proper rate, regardless of the fact that it had previously yielded to pressure when several years earlier it had set an excessive rate on the 40's. The new rate for the 38's, the company maintained, enabled experienced workers to earn anywhere from 18 to 35 per cent above their base rate. Hence there could be no valid reason for the union's demand for an upward adjustment of this rate.

Arbitrator's decision In this case the arbitrator felt obliged to disregard the contentions of the management that it was improper to compare the rate on the 40's with the rate on the 38's because the former rate had been set because of pressure tactics. The fact was that this rate had been installed by the company itself, and it had not exercised its option to take a dispute over the original rate to arbitration. Once having established a rate which yielded high earnings, the company could not eliminate the opportunity for employees to make such earnings merely by making a change in the type of yarn used. Consequently the arbitrator ruled that the rate for the 38's should be so set as to enable the workers to maintain approximately the same earnings as they had previously received while working on the 40's.

RATE ADJUSTMENT ON CHANGE IN JOB CONDITIONS

Grievances on incentive rates are by no means confined to situations where a union represents all or a majority of the employees. To be sure it is very rare indeed that an unorganized group has the chance to proceed through arbitration to get a final determination of a dispute. But actual instances have arisen where a committee of employees who have felt that there has been a violation of agreed-upon terms of employment has induced the management to consent to have their dispute referred to arbitration.

A case of this sort developed in a shoe manufacturing corporation. A committee representing more than fifty sole cutters complained that their rates had become inequitable as a result of changed job requirements. By mutual consent the following questions were submitted to arbitration:

1. What rate adjustment, if any, is to be made for cutting outsoles and insoles by reason of the new requirement in cutting resulting in the issuance

of M-310 by the War Production Board, which allegedly affected the cutters' earnings adversely?

2. What rate adjustment, if any, for cutting outsoles and insoles should be made because of the changed condition in which the leather now comes to the cutters?

3. What rate adjustment, if any, is to be made in the rates now applicable to cutting of more than one size on which the identical rate now applies?

4. What rate adjustment is to be made to apply to the cutting of outsoles and insoles to offset loss in average hourly earnings sustained by the cutters as a result of the change in method of counting the quantities cut, bottom lifts and top lifts?

Position of committee The committee representing the employees explained to the arbitrator that during the previous few months their hourly earnings had declined in excess of 10 cents an hour and their weekly earnings in some instances had dropped as much as \$8.00 to \$10.00 per week. According to the committee there were at least three distinct causes for such a substantial drop in their earnings. These causes included:

1. A regulation by the War Production Board prescribing that specific numbers of outsoles, midsoles and insoles had to be cut. This meant that dies had to be changed more frequently by the cutters and it also produced other factors which lessened the speed of the cutters.

2. The quality of the leather currently available as well as the unfinished condition in which hides then came to the cutters made their work not only more difficult but also more hazardous.

3. Prior to the changed conditions the cutters had been afforded the opportunity to cut "pads" and "top lifts" in substantial quantities. These operations had paid a good piece rate and in addition the company had used a very liberal method of counting the quantities cut. But with the introduction of a strict and accurate counting system the increment paid to the cutters for this type of work had been seriously impaired.

In summary the committee urged the arbitrator to readjust the piece rates so as to enable the cutters again to earn the amounts previously received by them while working at normal efficiency.

Company's position The company had a specific answer to each of the three separate contentions by the union.

As to the first point the company conceded that the War Production Board regulation had exerted an adverse effect on the output of the cutters.

With respect to the second point the company denied categorically that the impairment in the quality of the leather was as serious as the cutters had contended.

Regarding the third point the company frankly admitted that it had introduced a strict accounting system to eliminate payment of piece work earnings that had been excessively and improperly made.

Without accepting the validity of the committee's contentions the company expressed its willingness to have moderate piece rate adjustments awarded by the arbitrator, provided that such rates would not result in any increase in the average hourly earnings of the cutters that had prevailed before the decline in their earnings several months earlier.

Arbitrator's award On the basis of all the facts presented at the hearing the arbitrator concluded that the cutters were entitled to such adjustments in their piece rates as to offset the decline in their average hourly earnings resulting from those changes in working conditions which were agreed to by both parties. He also ordered an adjustment in the rates to offset in part the change in the method of counting the pads or lifts which was regarded by the cutters as an unusual action on the part of management to bring about a reduction in earnings. In so doing the arbitrator made the following recommendation:

This change in method of "counting," however, should not be construed as an indorsement or countenancing by the arbitrator of a practice that would ordinarily be considered as a legitimate part of the earning structure, but in this unusual situation this must be considered in combination with the other phases of the piece rate set-up, which formed a total earning record for these workers for several years which should not now be reduced."

As a final explanation of the rate adjustments which he ordered, the arbitrator commented that these rate changes "should provide the cutters the restoration in the loss of earnings they have sustained but should not result in any increase in their former average hourly earnings for the same skill and effort."

In this case, as has happened in many other similar instances, the arbitrator recognized the impossibility of making any mathematically precise and certain award. The actual effects of the adjusted rates could be determined only after they had been put in operation for an extended period. Consequently the arbitrator retained jurisdiction over the case and announced that he would review

the adjustments he had ordered at the end of a ninety-day period from the date of his award. If the results went counter to the reasonable expectations and produced either an unwarranted increase or decrease in the employees' earnings (with due regard to the amount of effort exerted by them), the arbitrator would then modify his decision accordingly.

RATE ADJUSTMENT AFTER STINTING

Everyone knows that it is not uncommon for employees to meter their output while new rates are being set. Neither is it uncommon for them to do the same sort of thing for a while after a new rate has been fixed, in the hope or expectation that the result will be a revision and loosening of the rate. There were indications that the employees of a shoe manufacturing company had adopted these tactics prior to the arbitration hearing on a dispute over their rates. The employees were represented by an independent union of shoe workers.

Of course the issue submitted to the arbitrator made no reference to stinting or slowdowns. The question as formulated and agreed to by both parties was merely: "What is to be the price to be paid per pair for cutting U. S. Army ski boots?"

The submission itself explained that the company had originally proposed 12 cents per pair and that the union had asked 18.2 cents per pair.

Company's position It was asserted by the management that the cutters were capable of producing a much greater number of pairs per hour than they had been producing. The management contended that the cutters were holding back their output so as to get a higher piece rate.

The company did not rely on suspicion. Its management had checked with other manufacturers and also had obtained information through the Quartermaster Department of the U. S. Army to ascertain what was an appropriate rate of output. Through these channels it learned that the output of cutters in other companies was more than double the amount of output by the cutters in its employ. Lack of training could not be used as an excuse for low production, the company contended. It had given the cutters a long period of time to become accustomed to this particular type of work. The cutters knew how to do the job and could produce at a satisfactory rate and enjoy high earnings if they were willing to

produce at a rate comparable to that maintained in other concerns manufacturing the identical types of shoes.

Union's contention Spokesmen for the union denied that there had been deliberate stinting on the part of the cutters. They admitted, however, that a larger output could be obtained once a satisfactory piece rate was definitely set. Moreover, the union contended, the company had already agreed to a piece rate for a group of craftsmen represented by another union and that rate was comparable to the one sought by the union representing the cutters.

During the course of the arbitration hearing the cutters agreed to work on a temporary piece rate basis of 15 cents per pair. The understanding was reached by both parties that there would be an upward or downward retroactive adjustment after the arbitrator had decided what the permanent rate should be. The union also agreed to accept the suggestion of the arbitrator that a survey be made by an outside expert to ascertain how the cutting work was being done in other plants manufacturing the identical type of shoe.

Arbitrator's findings When the report of the technical expert was received, another hearing was held. On the basis of the facts revealed in the report of the expert, the arbitrator endeavored to induce the parties to reach an agreement. At this hearing it developed that the cutters had moderately increased their output. There still was, however, a divergence of opinion as to the ability of these particular cutters to produce still more pairs per hour and thus to equal the rate of output of cutters in other shops, as disclosed by the report of the technical expert.

The conclusion reached by the arbitrator was that it was unquestionably possible for the cutters employed by this company to produce more shoes per hour than they had been doing. The actual records of other concerns demonstrated this to be the case beyond any question of doubt. Moreover, he concluded that a rate of 14 cents per pair instead of the 12 cents offered by the company or the 18.2 cents requested by the union, was a proper piece rate for this operation. With such a rate, he commented, it should be entirely possible for the company to get the output it desired and for the cutters to receive adequate earnings when they worked at a normal rate of speed and with proper application to their jobs.

REASONABLE EXPECTANCY OF INCENTIVE EARNINGS

In many contracts the amount of premium pay that incentive workers can be expected to earn over and above their base rates is

expressly set out. It may be described in terms of a percentage above the base rate or in terms of a specified number of cents per hour. Other standards are sometimes used. The one specified in a contract between a porcelain manufacturing company and the electrical workers' union (CIO) was described in rather general language. The contract provisions that gave rise to an arbitration case read as follows:

It is agreed that an appropriate incentive system shall be established along the following principles: Incentive shall be applicable to press operators and cleaners, and such other classifications as may from time to time be agreed upon.

The guaranteed and base rate for press operators shall be \$1.05 per hour, and the guaranteed and base rate for cleaners shall be 70 cents per hour."

It was contended by the union that employees holding the jobs of pressmen and cleaners had not been provided by the company, at the established piece rates, with proper opportunity to earn a "reasonable expectancy" of earnings over their base rate.

Union's contentions The union's contentions in this case can be summarized as follows: (1) In the setting up of time elements required to do the work, insufficient time was allowed for personal needs and fatigue. A combined allowance of 9.2 per cent was allowed for these purposes. The union cited many authorities in the field of industrial engineering who recommended fatigue allowances ranging from 10 per cent upwards for work of a lighter nature than that performed by the employees engaged in these jobs; (2) The company's calculated earnings of 20 per cent above the base rate did not constitute a reasonable allowance and was inadequate according to qualified specialists on time study matters. The union cited numerous firms with which it had contracts providing for incentive earnings ranging from 25 per cent to 33 per cent over the base.

Company's position With respect to the union's contention of an inadequate allowance for personal needs and fatigue, the management pointed out that in addition to the 9.2 per cent allotted for these purposes, 10 minutes were allowed each day for unavoidable delay and 15 minutes for clean-up. Hence the total allowance for the combined purposes amounted to 14.4 per cent, which was a very generous allowance indeed.

As to the rate of anticipated earnings, the company stated that it had originally allowed 15 per cent above base, which it consid-

ered adequate, but later increased the allowance to 20 per cent. This it regarded as entirely ample and in line with allowances recommended by noted engineers. It mentioned that one engineer had proposed 13 per cent, two, 15 per cent, five, 20 per cent, and only two had recommended 25 per cent.

The company made a further point. It argued that any additional allowance in the incentive rate would result only in an increase of the company's labor cost that would place it at a disadvantage with its competitors. The management cited figures showing that on one particular operation an increase in the piece rate of 15 per cent had resulted in an increase of output of only one per cent. In a second operation, a rate increase of 5 per cent had caused an increase of output of 9 per cent. In a third operation, a rate increase of one per cent had caused a production increase of 3 per cent. The averages for these three operations showed that with a net increase in piece rates of 5 per cent, the output had increased only 2 per cent. These figures, the company insisted, showed that the management had not been able to obtain a proportionately greater output when it had made it possible for its employees to obtain higher earnings.

Arbitrator's decision In this case the arbitrator did not content himself with examining the factual data and weighing the merits of the various arguments of industrial engineering experts cited by both parties. He himself made inquiries of his own. The arbitrator's decision embodied a lengthy quotation from one of the leading authorities in the industrial engineering field. The arbitrator's conclusions were as follows:

1. The work performed by the pressmen and that performed by the cleaners warrant slightly different fatigue allowances in the computation of time allowance.

The cleaners who work normally at a steady pace, should, in the arbitrator's opinion, have a slightly higher allowance than is allowed the pressers, and an additional 2.5 per cent is recommended.

The pressers' fatigue allowance is to remain as at present.

2. The incentive allowance is to be increased to 25 per cent. This percentage is in keeping with general practice in industries where as much manual effort is exercised as there is in this plant."

The opinion of the industrial engineering expert which the arbitrator quoted and embodied in his decision was as follows:

The first and basic principle in any wage incentive installation is to so control methods, machinery and materials, and the *planning of the work*, that the

worker is *never held up* or *delayed through no fault of his own*. This is management's responsibility—not labor's. More wage incentive installations fail to perform satisfactorily because of inadequate attention to this basic requirement than for almost any other reason. It is mentioned here only because this fact is so often ignored by manufacturers in setting up wage incentives.

The objective of any incentive is to amply reward workers who attain a higher performance than that attained under non-incentive operations, or at hourly or base rates. In determining the expected higher productive level, the standard should be set at a level which can be consistently maintained by a good average worker without strain. The highly skilled or the more diligent will earn more than the "good average," the laggards will earn less. There should never be a maximum limit on earnings.

Just what is an ample reward is, of course, a matter first of judgment and experience and then—as you know so well—often a matter of considerable debate.

It is often erroneously thought that the degree or percentage of the reward should vary inversely with the base or hourly rate. This argument usually runs that the more highly paid workers should not receive as high a percentage reward for attaining greater production as the lower paid, since the former are getting so much more to begin with! This idea is entirely fallacious and when practiced, works directly against the employer's interests. Increased production from the higher paid workers is obviously proportionately of more value to the employer than that of the lower paid, and if differences in incentive were admitted, logic would seem to dictate in favor of the higher paid instead of the contrary.

Incentive allowances should never be adjusted in an attempt to correct inequities in a base or hourly wage. Base pay or hourly rates should be governed largely by job requirements determined preferably through job evaluation techniques.

"EXTRA" NOT WARRANTED

Let no one think that reputable arbitrators ever are inclined to support contentions of unions for maintenance of their members' earnings, regardless of changes in conditions. It is true that management, in its effort to attain maximum production without disproportionately high labor costs, may sometimes try to find means for reducing rates that get out of line. But a proper reason for readjusting a rate, if properly presented to the arbitrator, and if permitted by the express terms of the contract, is most likely to be upheld in arbitration proceedings.

A shoe manufacturing corporation was confronted by the claim of the CIO shoe workers' union for the restoration of the price originally established upon the introduction of "Compo-Compressor Sole Attachers." In plain language, this meant that when chemically treated soles were first introduced it was recognized by the manage-

ment that employees were subjected to handicaps in working on these soles and a price rate adjustment was accordingly made by increasing the rate from 36 cents to 50 cents per 36 pairs.

A few months later, there was a change in production conditions. The handicaps that prevailed at the time when the chemically treated soles were first introduced, were eliminated. Accordingly the company reverted to the 36-cent rate. That was the explanation of the management. The union maintained, however, that other conditions had arisen that retarded the employees' production and that therefore the original rate should be continued.

In rebuttal testimony at the arbitration hearing, the company made two further points: First, it explained it did not eliminate the extra premium that was paid when it became necessary to work on chemically treated soles, until sometime after it had reverted to the use of "strap" leather. Instead the management wanted to make certain that the leather then in use provided the same working conditions which had prevailed before it became necessary to add the extra 14 cents. Only when the management was sure that normal working conditions had been restored was the extra eliminated.

The second point was purely factual. The company provided the arbitrator with a record of the earnings by Mr. G., an experienced sole layer. He had worked steadily during the entire period when the extra was paid and also for a further six-month period after it had been eliminated. Despite the reduction in his piece rate, Mr. G.'s average hourly earnings for the latter period showed an increase over the former, of some six cents per hour.

The arbitrator rejected the union's claim. He declared that recognizing the fact that the extra of 14 cents would unquestionably result in an increase in the average hourly earnings of the job without increasing production and without added effort, he was of the opinion that there was no justifiable basis for the restoration of this extra.

RATE REDUCTION PERMISSIBLE ON DISCOVERY OF ERROR

In still another shoe company case, an independent union protested the management's action in reducing the rate for cutting two types of patterns. The union insisted that the rates originally set by the company three months earlier be maintained. It argued that the initial rates were not entirely satisfactory but the members of the union had accepted the rates and proceeded to cut the shoes.

It was asserted by the union that, after the rate reduction, the fastest cutter could not cut more than one case per hour and the ordinary cutter could not complete a single case in one hour. The result of his lowered production was a decrease in his average hourly earnings of about 20 cents per hour.

The company maintained that in setting the piece rates for these particular patterns it had followed a method that had long been established and agreed to by the union for setting cutting rates. If this method had not been followed, the company argued, the union would have been the first to complain. But in fixing the rate for these patterns, the company pointed out, an error had crept in. It was a simple error in arithmetic. The number of pieces in these shoes was counted to be twelve per pair instead of ten. When the error was discovered, the company immediately made a proper correction in the rate. To refute the union's testimony regarding the earnings of the fastest cutter, the company produced figures demonstrating that many of the other cutters had earned, at the corrected rate, piece rate pay in excess of what they had received when the rate was initially set.

In the opinion of the arbitrator, the real issue to be decided was whether or not the practice theretofore followed by the company in setting piece rates for cutting, should be disregarded. On the basis of the evidence presented, the arbitrator was unable to find any justification for disregarding the previous practice. Accordingly the arbitrator upheld the company's action in adjusting its rate to eliminate the arithmetical error. In doing so he went on to say that, "He would be rendering a disservice to the company and to the union if he were to undertake to disregard the setting of the rates which had heretofore been followed, as this would unquestionably lead to many controversies in the future, if he were to set a new precedent for setting rates for cutting."

RATE ALLOWANCE FOR CHANGE IN MATERIALS

In negotiating a union contract which either sets forth specific piece rates for particular operations or prescribes the methods to be used in fixing piece rates, it is difficult or impossible to anticipate or conceive changes in job conditions. Hence it may become necessary to submit to arbitration disputes as to the meaning of words or phrases that may be of the most common usage in the industry.

A case in point is one that developed between the shoe workers' union (CIO) and a manufacturer of women's footwear. The union insisted that a rate adjustment should be made for cutting "gabardine with faille backing." The union contended that this combination of materials presented a difficult cutting problem and at the established rate for cutting, which was the same as for leather cutting, the employees were unable to produce enough to attain their normal average hourly earnings. The union therefore insisted that the rate be changed to yield to the cutters their normal earnings.

The company relied on the language of the contract. There was a provision in the contract stipulating that the rate for cutting "single" cloth would be the same as for cutting leather. The management admitted that the combination of gabardine with faille backing did take somewhat longer to cut because of its thickness, but argued that the claim presented by the union was exaggerated. The management further asserted that this item involved a very small quantity of the total output of the cutters and therefore the variation in the rate of output was inconsequential.

It was significant that this particular contract did not provide for a guaranteed hourly rate to employees who, while working on piece-work operations, were unable to produce enough to earn as much as or more than the established hourly rate payable for non-piece-work assignments. The arbitrator pointed out that the granting of the union's request would amount to giving them a guaranteed hourly rate in excess of the established hourly rate when they were not working by the piece. This, he declared, would create a situation ultimately detrimental to both the company and the workers and would certainly have an adverse effect on the incentive system.

But the arbitrator recognized that case to be an exceptional and unusual one. Certainly the language of the contract relating to the cutting of "single" cloth did not contemplate a situation of this kind. Since the question submitted to him gave him full discretion to reach any equitable solution, he ruled as follows: "For work performed on gabardine with faille backing, workers should have made up to them the difference between their earnings at the set piece rates and establishment of an hourly rate for the time actually consumed by them in cutting this item whenever their earnings on this fabric fall below such a minimum."

GUARANTEED WORK LOAD OR GUARANTEED EARNINGS

Here is a case involving not only an important principle but also such intricate issues that its full significance can best be understood by exact quotation of the issue submitted for arbitration and the arbitrator's entire findings and award. The case arose in a textile mill, the workers of which were represented by the AFL textile workers' union.

Submission for arbitration Are the 53 workers employed in the Solvent Plant, Wool Shop and Wash House entitled to receive additional compensation for alleged lack of work at the established piece rates, supplied to them for the period beginning with the signing of the contract October 10, 1941 to the present date. Union claims that these 53 normal force workers were entitled to a minimum of 10 batches of work on a regular eight-hour day before any peak force worker could be employed, while the company contends that no specified number of batches was ever guaranteed to the normal force workers and therefore these workers are not entitled to any more compensation than they have received at the established piece rates for work which they have actually performed.

The undersigned parties, having been unable to dispose of this dispute by themselves, have agreed to submit the same to the arbitrator, and they have further agreed that they will abide by the arbitrator's decision, which is to be final and binding upon them, subject only to the approval of the War Labor Board if same is required.

Union's claim The union contended that the normal force employees, in the Solvent Plant, Wool Shop and Wash House, who work on the first and second shifts, are entitled to receive full time work, consisting of eight hours each for five days of the week, before any peak force workers can be employed, this peak force working on the third shift.

The contract now in effect and the preceding contract entered into in October, 1941, the union pointed out, provides (Article II) "The company agrees that the regular work week shall be forty (40) hours, Monday to Friday inclusive, of eight (8) hours per day"—and contract further provides (Article V) . . . "the available work shall be distributed among the normal force, and peak force workers shall not be recalled until normal force workers are receiving full time work."

The union also stressed the fact that a full day's work of eight hours in the solvent plant is based upon the output by the entire crew of ten batches of work, each batch consisting of 10,000 pounds of wool. When the normal force workers were not provided by the company with ten batches on a given work day, they were paid proportionately for the lesser number of hours. This practice occurred frequently, although there were twenty or more batches available for the first and second shifts, but the company, in its desire to provide work for the third shift (peak force) deprived the first and second shifts of work to which they were entitled. The union, therefore, urged that these normal force workers be compensated for the loss they have sustained. The

period covering the loss the union maintained is the period beginning with the signing of the contract October 10, 1941.

Company's position The company did not deny that ten batches constituted a day's work of eight hours (except on Monday, which is a nine-batch day, but is balanced with an eleven-batch day during the same work week), but it questioned whether the contract provisions referred to by the union make it obligatory upon the company to provide "piece" or incentive workers with full eight hours' work when a third shift of peak force workers becomes necessary, and there is not sufficient work for full eight hours for each of the three shifts, but more than the two normal force shifts can perform during each of their eight-hour shifts.

The company argued that it is not always possible nor is it practical to operate the mill efficiently with the limitation such as the union insists on.

The company also stated that on very many occasions normal shift workers, particularly those employed on the second shift, refused to do more than eight batches of work (about $6\frac{1}{2}$ hours), and it was therefore not possible to operate the mill without a third shift, without seriously affecting the over-all output and the earnings of large numbers of other workers at the mill.

The company also claimed that a committee of the workers (kier chargers) in conference with the top department superintendent, had reached an understanding that on such days when the total available work ran between 21 and 24 batches that the first and second shift workers (normal force) would consider eight or nine batches a day's work, so that the third shift (peak force) could be provided with at least five batches of work (one-half day).

As to the retroactive date of any claim which the union presented, the company stated that no grievance was ever filed during the entire life of the previous contract; also no mention of any such requirement as the union now presents was made prior to the time of the signing of the current contract which became effective May 21, 1943. The first notice of this complaint came to the company's attention when the grievance was formally presented in January 1944.

Attempts at settlement Subsequent to the first hearing during which both sides were heard fully by the arbitrator, he was made aware of the alleged agreement which was entered into by the committee and the superintendent and he was informed that the committee's action was subject to the approval of the union, but that this approval was never given. Arbitrator urged that the company and the union endeavor to solve this problem on a basis that the spirit of the contract will be observed and at the same time the company will be enabled to operate efficiently and not be handicapped in a manner that as a result of the limitation put on the wool shop and solvent plant, other departments in the mill will be adversely affected and will suffer loss in output and earnings.

At the hearing held on February 6, 1945, arbitrator was informed that the union with full support of the workers involved, agreed to accept, when the company deemed it necessary, eight batches of work instead of ten, provided they were paid for nine batches on such days. This concession was made to enable the company in the future to provide work for the third shift peak

force, without going contrary to the contract provisions now in effect. The workers will cooperate by conceding the earnings of one batch on such days, while the company will pay for one batch over the actual eight-batch output.

Arbitrator's finding The arbitrator notes with satisfaction the cooperative attitude of the union and the company, in solving this controversy pertaining to future performance in this amicable manner.

Arbitrator finds that the contract, while not very clear in regard to the company's requirement to provide "piece" or incentive workers with definite amounts of work, as a general rule it does indicate that an eight-hour work day is a regular day of work to which a normal force worker is entitled before a peak force worker is to be given work, and in this instance the company has set up a day's work to be a definite number of units (10 batches) and has based the workers' day's pay thereon. When sufficient work is available, therefore, and is withheld from the normal force worker, his claim is legitimate.

The agreement, therefore, to modify the work day requirements under these special circumstances, warrants the conclusion by the arbitrator that the union's claim for loss sustained by the normal force workers in the past, should be adjusted on a like basis, retroactively to the date of the filing of the complaint.

The arbitrator is convinced that the company did not deliberately violate the contract, but that it had followed the practice of providing less than a full day's work to the normal force workers, under the misapprehension that 'piece' workers were not 'guaranteed' a full day's work, although such full day's work was available. This belief was further strengthened when the union neglected to file any complaint in regard thereto during the entire life of the preceding contract and was furthermore encouraged in pursuing this policy of allowing some of the normal force work to go to the peak force, by the 'agreement' it reached with the committee, which it considered at the time as authorized.

Arbitrator therefore rules out the request that the company be held responsible for loss if any sustained by the workers beginning with the period of October 10, 1941, and limits the time to the date of the official filing of the complaint in January 1944.

Arbitrator also finds that the action of the workers, particularly those on the second shift, in declining to do more than eight batches a day on various occasions, made it difficult for the company to regulate its production with any degree of certainty by the normal force itself, and the company was obliged to provide a peak force to keep operating efficiently, hence to compel the company to pay for ten batches, which the workers themselves refused to fulfill, would indeed be unfair.

Arbitrator accordingly rules that for the period beginning with the date of the filing of the grievance which is early in January, 1944, the workers employed in the Solvent Plant, Wool Shop and Wash House, comprising the wool deliverers, bridgemen, kier chargers, truckers and wool receivers, totalling 26 workers on the first shift and a like number on the second shift, are to receive compensation for a total number of one hundred and two (102) batches, for which they would have been compensated under the arrangements made in the modified agreement which is now operative, had same been in effect at the time of the filing of the grievance.

The arbitrator bases his award as to the number of batches upon the factual data submitted to him by the company, which he accepts as the correct number of batches to which the first shift would be entitled. The same compensation is to apply to the 26 workers on the second shift, although the actual deficiency for this shift may be greater, but such deficiency is in a large measure due to the voluntary action by the second shift workers in keeping their output down below the normal day's work.

This award is made by the arbitrator pursuant to an existing contract as modified and is not intended as any wage increase.

AVERAGE EARNINGS NOT PAYABLE WHEN OUTPUT RETARDED BY EXTRANEOUS FACTORS

When a technological improvement is made in an industrial concern, even though it may be a change of methods in one single department, the earnings of a great many workers throughout the plant may be affected thereby. It is a union's business to try to prevent its members' earnings from being decreased, by objecting, via the grievance procedure, or through arbitration proceedings, when it believes such a decrease is unwarranted or perhaps deliberate on the part of the company.

That was what the CIO textile workers' union sought to do when a textile firm installed new operating methods in the spinning department of one of its mills. But in this case it was not the earnings of the spinners that the union wished to protect. The spinners had received their average hourly earnings during the trial period of the changed operation, in accordance with the contract provision governing changes in methods. It was in behalf of the workers in another category whose earnings had been adversely affected by the change in spinning methods, that the union filed the following grievance:

Spinners are on a trial period, change No. 407, and are being paid average hourly pay as per contract. The union requests average hourly earnings for doffers during the trial period, which is effective June 10, 1947.

The "doffers' " work load, and consequently their earnings, depended on the amount of time the spinning frame was actually running. Because of the interdependence of the spinning job and the doffing job, the union claimed the doffers were entitled to the same guarantee of average hourly earnings as that allowed the spinners, during the trial period of the change in the spinners' job. Witnesses for the union testified that the earnings of the doffers had declined during the trial period, and since their earnings were

affected by the change, they felt they too were entitled to be protected against any loss in their earnings while the spinners were trying out the changed job.

The union cited the contract clause pertaining to work loads, which is as follows:

The employer shall have the right to change or introduce machine processes, methods of manufacture, to make time-studies and work assignments and job specifications in accordance with sound rate-setting practices and principles for the purpose of insuring the efficient operation of the mill and utilizing the employee's time effectively. The affected employees and management have the duty and responsibility to cooperate in giving the workload a fair test during the trial periods.

No distinction, the union pointed out, was made between employees who actually operated the job of the proposed change and the employees who were affected by the resulting changes in the job conditions. According to the union, the doffers were "affected employees." And since both the management and the affected employees had the duty and responsibility to cooperate, the management should extend the benefits of the guarantee to the doffers, in accordance with its obligation to "cooperate."

In support of its position, first the company stated that the union's grievance claiming average hourly earnings for the doffers, went beyond the contract provision. When the spinners' duties had been increased, the company had paid increased rates to the spinners. But since the doffers' duties had remained intact, it did not believe there was any basis for sustaining the union's claim for maintenance of the doffers' average hourly earnings.

The company also maintained that the union had stretched the term "employees" in the contract clause to cover service employees in the department. Since the union had never before attempted to impose this added obligation on the company, and as acceptance of such an obligation had never been the company's practice, it did not consider it its duty to assume this responsibility now.

Then the company submitted a record of the earnings of the doffers during the eleven weeks preceding the trial period, and during the four weeks' trial period. This record revealed that the average hourly earnings during the trial period had dropped six cents per hour.

This drop, the company pointed out, was not entirely due to the change in the spinners' job. Even if it had been, nothing in the

contract justified the union's contention that there was to be a guarantee of the doffers' earnings while the spinners' job was undergoing a change. There was another factor, the company spokesman declared, that might have affected the doffers' earnings. This was a change in the yarn count. Before the trial period, coarse yarn, which required more frequent doffing, was run. Since a finer yarn was used during the trial, and after it, the doffers' earnings were bound to suffer somewhat, due to the less frequent need for doffing.

The amount of fluctuation, as shown by the company's figures, was only 5 per cent, and this was not an abnormal fluctuation. It could not definitely be deemed to be the result of the change in the spinners' work. The company emphasized that it was neither obligated under the contract nor on the basis of the evidence submitted regarding the decline in the earnings of the doffers, to pay to the doffers their former average hourly earnings during the period when the spinners were on trial on their changed jobs.

The company spokesman argued that as for the union's contention that it is management's obligation to pay for experimentation, that question was not a subject for arbitration. The real issue boiled down to the question of whether service employees who worked in conjunction with other employees, were entitled, under the contract, to the guarantee of their former earnings during a period when the workers whom they service had been put on a modified job and had had their duties changed technologically or otherwise.

Arbitrator's finding Both the evidence presented and the pertinent contract clause influenced the arbitrator in reaching the conclusion he did. He found (1) that there had been no change in the doffers' job and (2) that the contract did not provide that workers whose jobs had not been changed, but whose work depended upon others whose jobs had been changed, were entitled to any guarantee of their earnings during the trial period of the workers whose jobs were changed.

The arbitrator noted that the company's figures showed that the actual earnings of the doffers, even during the trial period and shortly thereafter, had been affected to a limited degree, and therefore the amount involved was not significant. And even if the decline in the earnings of the doffers had been much greater, the same principle would apply.

The arbitrator also pointed out that, "To some extent, a great

many workers are affected by any change that is made in a plant, in one way or another—some more closely and others more distantly. But the union's concept, in the arbitrator's judgment, is not covered by the contract language." He ruled that the union's grievance could not be sustained.

ALLOWANCE FOR UNAVOIDABLE REDUCTION IN OUTPUT

Occasionally an arbitrator has to assume the role of trouble shooter and to delve into questions that have baffled both sides involved in a dispute over piecework rates or incentive earnings. That is what happened when the union of textile workers (AFL) and a cloth manufacturing company took to arbitration a question as to whether or not there should be an adjustment in the earnings of the employees in a spinning department during a four-month period when their output fell to substandard levels.

The union advanced no specific explanation as to why the output and the earnings had declined in the spinning department. Its spokesman merely asserted that the workers, through no fault of their own, had been subjected to a loss in their earnings.

The company did not deny that there had been lower earnings in the spinning department over the four-month period. The company maintained that the same methods for computing piecework earnings were used during this period as had been used throughout the entire time since the rate had been set, and furthermore that there had been no changes in methods of operation during this period. Arguing that no adjustment was warranted to offset the lower rate of output, the company stressed the fact that nothing in the contract required it to guarantee that the workers would receive average hourly earnings at any certain level. All the contract specified was that employees would receive their basic straight-time hourly rate whenever their output was enough to produce a premium above that rate. Because of the inability of either the management or the union to determine accurately and conclusively what had been the causes for the decline of output, they acceded to the suggestion of the arbitrator that a survey of the conditions in the department be made by a firm of consulting engineers. Specific questions to be looked into and reported by the engineers included the following:

1. Have the standards been changed when they were posted from those that prevailed prior thereto?

2. To what extent have allowances been made in the past which were discontinued when standards were posted?
3. Has any change been made in the computation of factors that would account for the decline in the workers' earnings?
4. To what extent have the spinners' earnings declined by comparison with the twisters and winders?
5. Have the earnings shown an appreciable gain after February, 1945, and if so was it because of the type of available work being different from the work available prior thereto, or for some other reason?

The report of the engineers, when submitted to the arbitrator and to both parties, gave negative answers to the first three questions. As to the fourth question, the engineers found that the earnings of the spinners had not declined at any greater rate than that of the twisters and the winders.

With respect to the fifth question, the engineers reported that the spinners' earnings had improved substantially after February, 1945, and that the improvement was due primarily to the disappearance of the causes which brought about the decline.

Then the engineers went on to explain their findings as to what had brought about the conditions that had caused a temporary reduction in output. Their conclusions are here summarized:

1. There was an increase in percentage of work done on straight hourly basis. (The company questioned the accuracy of this conclusion on the ground that a total of only 21 employees was surveyed, and while this number was agreed upon for a test check in regard to this point, a complete check by the company of the pounds produced by all the workers, for which they received piece pay and time pay, revealed a different result.)
2. Low moisture content of yarn reduced piece work earnings during period of dispute.
3. Many operators arbitrarily refused to work the equivalent number of overtime hours they had worked previously.
4. A number of new lots were begun in December, which contributed to the decline.
5. Many of the lots processed during the period of controversy were short runs, which prevented the operators from becoming accustomed to the particular blend and reaching their normal productivity.

Arbitrator's conclusions and award It then became the duty of the arbitrator to interpret and apply the facts elicited from the study of the consulting engineers. His initial conclusion was that neither the company nor the workers were proved to have been directly responsible for the loss in the earnings during the period in question. He then ruled that the workers were entitled to compensation

for the actual loss in their earnings on an average hourly basis, provided it was proven beyond a doubt that the methods used in the computation of the incentive rates, or the proportions of work which carried varying rates, had changed to such an extent that the average hourly earnings were depressed thereby and that they themselves had not contributed to the decline in their average hourly earnings.

Thus the arbitrator, instead of making an immediate award, established a basis upon which an award had to be made if a further factual investigation showed the workers had been improperly paid. In deciding upon this approach, he noted that the consulting engineers, in their investigation, had found that the conditions prevailing during the four-month period while the output was substandard, were almost identical to those that had existed during the same four-month periods in the two preceding years. He therefore ruled that the average hourly earnings for each craft or group of workers in the spinning department should be computed for these two preceding periods and compared with their earnings in the current period. Finally, each group was to receive as an adjustment and as an award by the arbitrator, a sum equivalent to 50 per cent of any loss shown to have been sustained by each or any of the groups separately.

This award was made solely on the basis that neither the union or the management was able to demonstrate conclusively what had caused the shrinkage in output. There were grounds for belief that both sides had contributed to the situation. Hence both sides should share in the result. In making his award, the arbitrator went on to point out that it was not to be construed as a conclusion by the arbitrator that workers employed on a piece rate basis were to be guaranteed, as a matter of course, their average hourly earnings under any normal set of circumstances.

9. CONTRACT CLAUSES ON "FRINGE ISSUES"

During World War II the term "fringe issues" first came into vogue. That was in the days when the National War Labor Board took jurisdiction over and ordered the settlement of almost any types of disputes involving new contract clauses that could not be settled by the parties themselves. Generally speaking, fringe issues are those relating to all sorts of monetary matters apart from the basic question of the amount of direct wage adjustments all across the board.

Because of the almost universal insistence by labor unions that in entering into new contracts, "nothing shall be taken away from them," there are still thousands of contracts that embody the same provisions that were written into earlier contracts by virtue of War Labor Board orders. The speed with which that board processed its cases, the vast quantity of disputes that it had to settle, and not infrequently, the unfamiliarity of some of the members of the panels, original boards, or even of the National Board itself, with the underlying circumstances of each case, produced an element of uncertainty in the meaning of many of the contract clauses which they ordered. Hence for years to come, perhaps, it will still be necessary to submit to arbitration questions involving the interpretation or application of fringe issue clauses that first originated in disputes that were decided by the National War Labor Board.

There are, to be sure, other types of fringe issues that came into being when the parties themselves failed to get together and to write clear and unambiguous clauses relating to money matters apart from the general wage adjustments. Rates and conditions for paying overtime, night shift premiums, vacation clauses, and so on, are often not spelled out with certainty in the contract. Arbitrators are not only called upon to interpret contract clauses on these items, but

are quite frequently requested to decide questions of fact regarding whether or not in a given situation an employee or group of employees has met all the conditions requisite to eligibility to receive the additional compensation specified under the contract. In view of the almost endless variety of fringe issues that have been subject to arbitration proceedings, space limitations make it necessary to select and review a comparatively few cases that illustrate some of the more important issues that have arisen or are likely to arise under current contracts.

GUARANTEED WORK OR PAY

When the management and the union are negotiating the terms of the contract relating to hours and overtime, they may be inclined to overlook certain implications that may later arise to plague them both. Are they actually determining the hours that shall be worked under normal conditions? Or are they really deciding what the weekly or hourly pay shall amount to, regardless of the actual hours worked? The point is that most parties should be most alert in seeing to it that whatever they agree upon is so written as to avoid loopholes that may be subject to serious disputes once the contract has been put into effect.

It happens that the case here reviewed is one that developed before the National War Labor Board went into operation. Hence the impasse that arose cannot be attributed to outside intervention. It was rather the result of a complicated situation that occurred when a dairy products company took over the business of another company and assumed the obligations of a contract previously entered into with the teamsters' union (AFL), which represented the employees of the company which was absorbed into the larger corporation.

Contract clause involved The question submitted to arbitration was whether or not a specific clause in the contract was intended to require the company to pay its regular employees for a full week when they were not fully employed during that week.

The disputed contract clause read as follows:

It is agreed that eight (8) hours shall constitute a day's work and forty-eight (48) hours shall constitute a week's work. This provision applies only to inside employees. . . The employer will pay the regular hourly rate for the first six (6) hours overtime in any one week and time and one-half will be paid for all time worked in excess of fifty-four (54) hours in any one week, except in case of emergency.

This provision had been construed by the union and the company to mean that each employee was assured eight hours' work per day and 48 hours per week, and no layoffs were allowed. In other words, every employee was guaranteed 48 hours' work each week, or in lieu of it, a full week's pay equivalent to 48 hours of work. (Since this company was not subject to the Wage-Hour Act, overtime at the rate of time and one-half was not required to be paid after 40 hours of work. Instead, the overtime rates, if any, not being subject to any federal law, were the subject of negotiation between the parties.)

When the larger corporation took over the local concern and continued in effect the contract that had been negotiated with the teamsters' union, no different construction or application of the contract clause was put into effect immediately. Shortly thereafter, the contract came up for renewal and the identical clause was embodied in the new contract. These were the main points made by the union in insisting that the corporation taking over the contract with the local concern and then negotiating a new contract, was obligated to adhere to the strict terms of the new contract as they had been previously applied by the management of the old company which it had absorbed.

Spokesmen for the corporation disputed the reasonableness of the union's contentions. They argued that in the course of negotiating the new contract, the management had discussed with the union the fact that its problems of production and distribution were quite different from those confronted by the predecessor concern, that its competition was different, and its sources of supply were different. Therefore, they contended, the union was aware at the time of the contract negotiations that what the new management might regard as a reasonable application of the contract clause relating to hours per day and hours per week, would not necessarily be the same as the application of the same clause when it was originally entered into between the union and the smaller local concern. Just as a single example, the company cited that under its present operations, production might fall as much as 75 per cent in a single week. Likewise production might increase by as much as 60 per cent within a given week. Hence the management concluded it would have been unreasonable, if not impossible, for it to have guaranteed continuous 48-hour employment to its employees, and that it had no intention of doing so in agreeing to the clause, the application of which was currently in dispute.

Arbitrator's decision Here was a case to which great importance was attached by both parties. A complete transcription of the hearing was prepared by a court reporter. Following the hearing, formal briefs were presented by legal counsel for each side. The arbitrator had to weigh with great diligence the respective arguments advanced by both parties. He found it essential to take into account the history of the contract negotiations, as well as closely to scrutinize the contract language itself.

The arbitrator concluded that while there was undoubted merit to certain of the contentions of the company, it was incumbent upon its management to have pressed with greater vigor the same contentions during its negotiations with the union. If a guarantee of a full week's work was too onerous a burden to be borne by the corporation, it was the duty of its management to press this point home and to refrain from agreeing to a contract clause containing such a guarantee. The arbitrator therefore declared that he had no alternative but to rule that the current contract actually called for a guarantee of 48 hours' work and pay. He then went on to observe that if the continued maintenance of the guaranteed work week caused too great a cost burden, the proper recourse of the company was to bring up the question for negotiation at the time the contract was being renewed, or to persuade the union to negotiate a review of this clause prior to the expiration of the contract.

IMPROPER DISTRIBUTION OF OVERTIME

A contract in force in a woolen mill contained the usual clauses with respect to payment of overtime for work performed beyond eight hours in a day of 40 hours in a week. It did not, however, specify the conditions under which overtime work should be distributed. The textile workers' union (AFL), which represented the employees, took to arbitration the question of whether or not 13 workers employed in the company's warehouse should be paid for time they lost as a result of the failure by the company to ask these men to work overtime when overtime work was available, and employees from other occupational groups had been assigned to such work.

It was stated by the union that prior to the time when it first raised the grievance, the warehouse workers, who had not previously been members of the union, had frequently been sent home at the close of their work day. Thereupon employees from other depart-

ments of the firm had been called in to perform overtime work. These employees had already done a full day's work in their regular departments. It was only after the warehouse employees had joined the union that the grievance arose.

The company admitted that the practice of assigning overtime work in the warehouse to employees from other departments was contrary to its established policy. The assignments had been made by an overseer without the knowledge of top management. When the union filed its grievance, this practice was immediately stopped. But, the company insisted, it had no obligation to make any payments to the warehouse employees who had not been given the overtime work, since there was no contractual obligation specifying the basis under which overtime work should be allocated to any occupational groups. As a further argument, the company pointed out that it had offered overtime on one occasion to the entire crew of the warehouse and that only six out of the 16 men in the crew had taken advantage of the offer. On another similar occasion, only three out of 17 had accepted overtime assignments.

In summary, the company maintained that no penalty should be levied for an alleged offense occurring at any time prior to the presentation of the grievance by the union.

In his decision the arbitrator expressed the opinion that it would be contrary to recognized practice to impose a penalty on the company for any action during the period when there was no mutual agreement between the parties as to what methods should be used in distributing overtime. If during the period when the warehouse employees were being deprived of overtime, they had individually felt aggrieved, they had certainly had the opportunity to have their case taken up through the grievance procedure. But neither the union nor the company had been made aware of the workers' complaint. Hence the company could not possibly be charged with having failed to correct an unfair practice, even though it admitted that the practice was an improper one.

The arbitrator's formal ruling was as follows:

The company now having recognized the impropriety of depriving workers in the department of available overtime in their own department, the union may, in the future, should this practice recur, make proper demand for loss sustained by any worker. As to the past, however, the arbitrator finds that there is no basis upon which the company can be required to make compensation to such of the workers who were willing to work overtime but who were not given the opportunity.

WHAT OVERTIME RATE IS APPLICABLE
ON SHIFT CHANGES?

No matter how clear and specific a contract clause may be, it still may be subject to arbitration if the contract itself is subject to modification as a result of current government regulations. Whether or not so stated in the contract, it is obvious that the terms of the contract cannot go contrary to the law. Thus if a law or properly authorized government regulation has the effect of modifying the terms of the contract, it is the law or regulation that governs rather than the express terms of the contract itself. The arbitrator was bound to make a ruling to this effect in a case arising between the electrical workers' union (AFL) and a wire manufacturing plant.

The issue formulated by both parties was:

Whether or not time and a half should be paid on the second eight hours of work during a 24-hour period when such periods are separated by an eight-hour rest period in the case when double time is paid for the first shift.

Facts entering into case There was no disagreement between the parties as to the facts that brought about the dispute. Their only difference was as to how the contract terms should be applied in the light of a wartime government regulation. (The question might be raised as to why any wartime regulation is still of current interest. The answer is a simple one, namely, that there are numerous peacetime regulations issued by such agencies as the Wage-Hour Division, as well as interpretations of law issued by the National Labor Relations Board, that may or may not modify the terms of the contract. And an arbitrator has to take into account all such regulations or interpretations in deciding questions as to whether or not a current contract has in effect been modified by the terms of a government edict.)

These were the salient facts in the instant case: (1) The company was operating three shifts around the clock. (2) Each shift was on a rotating basis. In other words, the employees assigned to shift A would work one week on an 8 A.M. to 4 P.M. shift, and another week, from 4 P.M. to 12 M., and on the third week, from midnight to 8 A.M. (3) The rotating plan required the workers to finish their seventh working day on, say, a Sunday at 8 A.M., and to begin their first day of the next week at 4 P.M. on Sunday. (4) The rotating shift schedule was so arranged that at no time, on going from one work week to another, would 16 hours of continuous work be

required. Instead, at the change in the work weeks, there was always an interval of at least 8 hours before a given shift had to start its new work week.

There was no dispute between the parties as to the right of the company to maintain the rotating shift schedule of operations. There was, however, a dispute as to what overtime rate should be paid to employees within the meaning of the following contract clause:

All hours worked beyond eight (8) hours in any consecutive twenty-four (24) hours or forty (40) hours in any one week, shall be considered overtime and shall be paid for at the rate of one and one-half ($1\frac{1}{2}$) the regular hourly or piece rate.

It was argued by the union that the foregoing contract provision had in effect been modified by the wartime regulation administered by the Secretary of Labor. This regulation was known as Executive Order #9240. It provided that double time should be paid as an overtime rate for "onerous" work performed in excess of 12 hours' work in any 24-hour period.

The company insisted that it was meeting its obligations both under the contract and under Executive Order #9240. It explained its position as follows. Under another clause of the contract, it was paying double time for all work performed on Sunday. Hence the workers involved had received double time while working between midnight and 8 A.M. on Sunday. When they began their next work week as a result of the change in the shift rotation at 4 P.M. on Sunday, they were then paid at a straight-time rate. This shift, the company insisted, was not overtime work, but was merely the beginning of a new work week and was properly paid on a straight-time basis. Even so, during each such Sunday, when the swing shift employees worked a total of 16 hours in a 24-hour period, they actually received a total of 24 hours' pay for their work; i.e., 16 hours of double time for the work between midnight and 8 A.M., and 8 hours of straight time for the work done between 4 P.M. and midnight. Hence the result was the equivalent of time and a half for 16 hours' work. Consequently, the terms of the contract had been met.

On the issue of what constituted "onerous" work, the company did not rely on argument alone. It obtained a ruling from the Labor Department officials administering and interpreting Execu-

tive Order #9240. The management had arranged with these officials for an informal hearing participated in by company representatives and union representatives. Both sides had presented their views to the Labor Department officials and had followed them up with briefs. After reviewing the briefs, as well as listening to the oral presentation, the Labor Department officials had ruled that no "onerous" work was involved by reason of the requirement once every three weeks that a new work week begin for the swing shift workers only 8 hours after they had completed their final tour of duty in the previous work week.

Arbitrator's decision On its face, this dispute seemed to involve highly complex issues. In the light of all the testimony, the arbitrator found, however, that the question narrowed itself down to whether the beginning of the new week for rotating shift workers, which necessarily had to start on the same day (after an 8-hour rest), did in fact produce "onerous" working conditions, within the meaning of Executive Order #9240. He found that the contract language did not require payments beyond those that had been made at the rate of time and a half by the company, under its interpretation of the contract requirements. In view of the fact that the administrators of the order that required additional payments for "onerous" work, had decided that the federal regulation did not apply in this case, the arbitrator upheld the position of the company and ruled that double time did not have to be paid for the 8-hour period constituting the first shift of a new work week, even though it fell in the same 24-hour period as the concluding shift of the previous work week.

EXTRA PAY FOR DOING WORK OF ABSENTEE

If there are no specific contract terms setting forth the nature of the duties of each job, or providing for temporary reassignment of duties without change of rate, disputes may develop over the amount of pay to be given employees who take on additional duties.

Such a dispute arose between a woolen mill and the woolen and worsted workers' union (AFL).

The union contended that Mr. P. and Mr. G. should receive additional pay when on three different days they performed the work of Mr. R., who was absent on these days. The union based its claim on two counts, first, that the two men performed all the work of the absent employee, in addition to the work on their regular jobs,

and therefore were entitled to share the full pay of the absentee; and secondly, the practice of dividing up the pay of an absentee worker among the employees who took over his duties, was a practice long in effect in other mills in the area and long recognized as proper.

The company conceded that Mr. P. and Mr. G. had done some of Mr. R.'s work on the three days in question. They had not been required to do so, but had taken over his job voluntarily, in accordance with the practice that had prevailed in past years. But the company insisted that the two men had not been able to do the absentee's whole job. They were not asked or required to do Mr. R.'s work, but did so voluntarily, presumably because they were not fully occupied on their own jobs.

The company made the further point that its costs were based on past practices, and since no payments had previously been made in instances of this nature, to initiate a new practice would bring about added costs which were not contemplated at the time the contract was put into effect.

Finally the company argued that the distribution of the earnings of the absentee worker among employees who took over some or all of his work, would tend to encourage a rotation of absenteeism and adversely affect plant efficiency.

Arbitrator's findings Besides reviewing the testimony as to the practice in this mill and in other mills, the arbitrator made an independent investigation of the situation prevailing in the area. He found that there seemingly was no hard and fast rule in the area governing the payment or non-payment of the wages of absentee employees whose work was absorbed by other members of the crew. He did find, however, many instances where an employee who had temporarily performed the work of two employees, was compensated in full for the additional work. He reached the conclusion that each instance should be judged on its own merits, but when it could be established that an employee was permitted or required to take over the job of an absentee in addition to his own work, he should be entitled to compensation, based on the amount of added output.

In the case in question, the arbitrator ruled that Mr. G. and Mr. P. had in fact together performed about one-half of the work usually done by the absentee. Consequently, he ruled that each of them

should receive additional pay for each of the three days when Mr. R. was absent, at the rate of pay Mr. R. received for his job.

EXTRA PAY ON CHANGE OF STARTING TIME

Complications often arise in determining the amount of extra wages, if any, payable to employees of plants operating on a three-shift basis around the clock. Even when the contract clauses are worded in such detail as to cover all normal situations, contingencies may still arise that may have to be referred to arbitration.

The steel workers' union (CIO) and the management of a railroad equipment company had worked out in their contract the following provisions relating to hours and overtime:

Eight (8) hours shall constitute a day's work and forty (40) hours, made up of five consecutive eight-hour days worked Monday to Friday, inclusive, shall constitute a week's work. All work done in excess of forty (40) hours in any one week or in excess of eight (8) hours in any one day, shall be paid for at the rate of time and one-half for hours worked.

The union made a claim for extra pay for employees on the second and third shifts in one of the departments, when they were required to report 15 minutes earlier or remain 15 minutes later than their regularly scheduled shift. They had been paid nothing for this additional time. The union based its contention on the precise language of the contract. It held that this extra work amounted to overtime that had to be paid at time and one-half the employees' regular rates.

The company insisted that overtime was payable only after an employee had worked more than eight hours in any one day or more than 40 hours in any one week. Its position was that the schedules inserted in the contract were for the purpose of indicating the normal starting and quitting time, and not to specify what constituted a day's work or a week's work.

The company pointed out that for some time the workers on the second and third shifts had been required to work only seven hours and forty minutes per day, but were paid for eight hours. Then for a period of six months the third shift workers had been required to work only seven hours and ten minutes per day, but still received pay for eight hours. Throughout this period it had been required of all concerned for overtime pay to begin after eight hours of actual work.

As its reason for changing the starting time, the management ex-

plained that because of increased production requirements, which necessitated taking on many new employees, the foremen in the department thought it desirable to start the second shift 15 minutes earlier and keep the third shift 15 minutes later, so that new workers on all shifts would be able to observe how the experienced employees performed their tasks and thus acquire knowledge of their jobs more speedily. There was an additional point made by the company to the effect that most of the workers were compensated on a piecework basis. Hence they were actually paid for any output produced by them during the additional time while they were required to be on their jobs. Even with the change in work schedules, the actual working time of the employees did not exceed eight hours in any one day, because they had a lunch period "on company time."

Decision of arbitration board This case was heard by a board of arbitration, consisting of a representative of the company, a representative of the union and an impartial chairman.

The board's decision was unanimous. This decision is quoted in full.

1. The foreman having required the second shift workers to report ahead of the time scheduled in the contract, and the third shift men to remain in the plant later than the time called for in the contract, did so in violation of the contract, even though some of the workers were willing to comply, the union being the contract party not having been consulted. The company therefore appears to be chargeable with a violation of the contract.

2. The union is likewise guilty of neglect in not calling to the company's attention this violation and thus enabling top management to correct this violation, instead of waiting over seven months before entering a complaint.

3. The company's claim that workers were compensated because of added output has not been conclusively established except to denote that there is a great likelihood that some additional compensation resulted, and that the company's claim was made in good faith.

4. The union's contention that all workers cannot be considered as having been able to produce (and thereby benefit from added production), but were nevertheless required to be available to the company this additional time (more than the contract called for) and are entitled to be paid for this "availability" or "attendance" time, does have some merit.

The board therefore feels, and both union and company representatives concur, that workers are entitled to be paid 45 per cent of their straight time pay for the fifteen-minute periods referred to and incorporated in this arbitration case and for which they have not been paid, that each individual worker was called upon to report or remain in the shop outside the regular work time provided in the contract, effective as of April 23, 1942, and ending October

5, 1942, and the board so directs. It is also provided that this award disposes of all claims of this nature for the entire plant.

CLAIM FOR "WASH-UP TIME" PAY REJECTED

The electrical workers (CIO) and a chemical company had entered into a special agreement providing for 15 minutes' wash-up time with pay for employees in a particular department. The reason for the agreement was that these employees were subjected to a great deal of dust and had always been obliged to wash up or take showers after completing their day's work. The dusty conditions were confined to this one department, and therefore the agreement did not provide similar privileges for any other employees.

Nevertheless, the union sought to extend the privilege to a truck driver, Mr. M., who serviced the department but was himself a shipping department employee. The union contended that Mr. M. was subjected to the same working conditions as the employees of the department and therefore it was just as necessary for him to wash up after his day's work as it was for the others.

On the other hand, the company insisted that Mr. M. had never washed up in the plant either before or after the 15-minute allowance was granted to the department employees. To include him as being an employee of the department involved would open the door, the company insisted, to claims by other employees who had occasion to visit the department from time to time. The intent of the special agreement, the company concluded, was to confine its application solely to the regular employees of the department who were subjected continuously to similar dusty conditions.

To get a full picture of the situation, the arbitrator made a personal inspection of the department, observed the working conditions there, and also observed the work performed by Mr. M. In reviewing the union's contention, and finding in favor of the company, he did so on two counts: (1) When the union and the company negotiated the 15-minute wash-up allowance, it pertained only to the employees of the one department, and Mr. M. was obviously considered to be an employee of another department. (2) Neither Mr. M.'s working conditions, as observed by the arbitrator, nor his own testimony as to his wash-up habits, would seem to indicate that he was among those who always did or always had to wash up before leaving for home.

EQUAL PAY FOR MEN AND WOMEN

The current contract negotiated by the electrical workers' union (AFL) and a cable manufacturing plant provided for separate minimum starting rates and job rates for men and women employed in different occupations. Because of the manpower shortage during the war, three women were put on jobs previously done by men in the materials receiving department. The union insisted that the women be paid the rate that had been received by the men. There was substantial agreement between the union and the management that the women were doing practically the same work that had formerly been performed by their male predecessors. The company insisted, however, that when women were assigned to this job it had a right to reevaluate it and to set appropriate rates.

It had been accepted practice under the contract, the company maintained, to restudy a job, and if necessary, change the rate, when women replaced men. And the fact that different rates for men and women had been negotiated and embodied in the contract, was in itself indicative that the union had accepted the principle of different pay for women from that paid to men, even though the work they performed was substantially identical. Moreover the company insisted that the rate for the job, regardless of whether it had been performed by men exclusively, was excessive and this was a proper occasion for revising the rate and putting it in proper relationship to the rates paid for comparable jobs.

The arbitrator did not accept the management's contentions as having validity in this particular case. He expressed serious doubt as to whether the company would have attempted to reduce the rates of the male workers had they remained on the job. Accordingly he ruled as follows:

If the female workers are doing the identical job previously done by men, and are acceptably performing all of the duties of the men, their rates cannot be changed. On the other hand, if the duties of the job have been lessened or modified, the corporation cannot be required to maintain an excessive job rate, whether the person performing the job be male or female.

The arbitrator then directed the parties to endeavor to agree upon the current job content, and if any substantial change in the content was found to exist, to fix a rate in conformity with the methods specified for setting such rates in the present contract.

OVERTIME PAYABLE UNDER TWO
SEPARATE CONTRACT CLAUSES

Here is another case which brought up such intricate matters of contract interpretation that its import can be understood only by direct quotation of the issue submitted to arbitration, the full text of the arbitrator's review of the union's and the company's contentions, and the arbitrator's findings thereon. This case was brought up by the electrical workers' union (CIO), which represented the employees of a plastics manufacturing company.

Question in dispute The issue submitted to arbitration was: "Is a worker entitled to receive premium pay for the sixth day worked, pursuant to Article 3 of the contract, during a regular scheduled work week when he is required to continue to work on a shift, and this overtime shift work overlapped on the day on which he would normally have been off?"

Union's claim and contention The union cited Article III, Section 3a, of the existing contract, which reads:

"Time and one-half shall be paid for all work performed on the sixth consecutive day of work in a regularly scheduled work week. In order to be entitled to this premium rate of pay on the sixth day, the employee must have worked a full shift on each of the five preceding days of the regular work week, except where the employee was absent for one of the following reasons:

1. Appearance before the Draft Board;
2. Sent home for lack of work after working part of a day;
3. Lost time due to disability caused by occupational hazards."

Also Article III, Section 2, which reads:

"Overtime at the rate of time and one-half shall be paid as follows:

- a. For hours in excess of 40 in any work week.
- b. For hours in excess of 8 in any 24-hour period.
- c. Any shift worker called to work at any time other than his regular shift shall be paid overtime for the hours worked outside his regular shift unless notified 18 hours in advance."

Also Section 6 of Article IV, which reads in part: "In no case shall overtime be paid twice; that is, if time worked falls under two or more of the overtime classifications, the rate paid shall be the higher single overtime rate applicable."

In accordance with these contract provisions, a worker who had worked six consecutive days, one of which days included premium pay because this worker was called to work outside of his regular shift hours on that day, is also entitled to premium pay for the sixth consecutive day.

Such premium pay for the sixth consecutive day worked, is not "overtime paid twice," as each day's premium pay is distinctly provided for in the contract, and is paid on each of two distinct days and for distinct and separate reasons.

In further support of its claim, the union drew attention to the specific provision which calls for the payment of double time for the seventh consecutive day, regardless of the work-week schedule, and in addition, such worker receives premium pay for Saturday, if Saturday is his sixth consecutive day in

his regularly scheduled work week. This likewise applies to holidays when worked in conjunction with Saturday work when Saturday is a sixth consecutive day worked of his regularly scheduled work week.

Furthermore, the union pointed out that specific exemption is made in the contract that no overtime is to be paid to a worker who makes a scheduled shift change-over which results in his working more than eight hours in a 24-hour period, but no provision exists which would deprive a worker from receiving premium pay for his sixth consecutive day worked, although he also earned overtime pay for a different day of the same work week pursuant to a specific contract provision.

Company's position The company stated that the issue concerns a worker who is scheduled to work a five-day week, Monday to Saturday, with Tuesday off, and who was asked, because of special circumstances, to work an additional shift after completing his Monday's shift at 11:00 P.M., i.e., to work from then on to Tuesday, 7:00 A.M.

In the opinion of the company, this worker, who was paid time and one-half for the extra shift on which he worked from 11:00 P.M. Monday to 7:00 A.M. Tuesday, is not entitled to overtime for the work which he performed on Saturday of the same week, since he has already been compensated overtime pay for one of the six days which he worked during that week.

It was asserted by the company that Article III, Section 2, provides for overtime pay for hours in excess of 40 in any work-week, and for hours in excess of 8 in any twenty-four hour period. Same Article, Section 3a, states: "Time and one-half shall be paid for all work performed on the sixth consecutive day of work in a regularly scheduled work-week . . ." and the same Article, Section 6, states that, "In no case shall overtime be paid twice; that is, if work falls under two or more of the overtime classifications, the rate paid shall be the higher single overtime rate applicable."

In instances when an employee is scheduled to work a shift consisting of five days, Monday to Friday, 3:00 to 1:00 P.M., and is required to work an additional shift on Saturday, starting Friday at 11:00 P.M. and ending 7:00 A.M. Saturday, he is entitled only to a single overtime pay, although under the contract he may claim:

- (1) Overtime for hours in excess of eight in a 24-hour period
- (2) Overtime for the sixth consecutive day worked
- (3) \$.125 per-hour bonus for Saturday as such, as provided in Section 5 of Article III.

The union is in complete agreement with the company in this instance.

The company maintained that the same practice should follow in the instance of the employee being required to work on a Tuesday which comes within the provision of over eight hours of a 24-hour period, and which work becomes one of the six consecutive days worked in a regularly scheduled work-week.

The company agreed that this worker is entitled to the \$.125 premium for Saturday work as such, although the contract states (Article III, Section 6, last paragraph): "If any work performed on Saturday falls under the overtime classification requiring time and one-half pay, the Saturday bonus of \$.125 per hour will not be paid."

It was pointed out by the company that it was the intention of the contract between the parties to provide for the payment of overtime for the sixth day worked in any six-day work period, with the understanding that the other five days of the work-week were paid for at straight time.

In the case under discussion the worker has received premium pay for one of the preceding five days, and it is contrary to the contract intent to expect overtime pay for the sixth consecutive day in addition, by counting the premium hours worked on Tuesday as straight time hours.

Arbitrator's finding The arbitrator has studied very carefully the contract provisions and has given much thought to the points of view presented by the company and the union, and has reached the conclusion that the real issue under the language of the contract is whether the payment for hours in excess of eight in any twenty-four hour period, which overlaps into another working day of the scheduled work-week is to be disregarded as a day worked for the purpose of counting the sixth consecutive day worked, for which time and one-half is due under the contract.

The arbitrator can find no language in the contract that would support such a holding, and in fact, if the arbitrator did so hold, he would in effect introduce a contract requirement not negotiated, nor agreed upon by the parties.

Although the company admits that the \$.125 premium for Saturday is due under these circumstances, the arbitrator is doubtful as to whether it was the intention of the parties to apply this requirement when Saturday was the sixth consecutive day worked in any scheduled work-week.

Also, the clear language in regard to the seventh consecutive day worked, leaves no doubt as to eligibility for such double pay, regardless of whether the preceding days were premium days or not.

Furthermore, overtime pay on any one day earned by any worker does not affect the premium pay for the sixth consecutive day.

Arbitrator is of the opinion, and so holds, that the premium pay for hours worked in excess of eight in any 24-hour period, may not be counted against overtime due for the sixth consecutive day worked, so long as each premium is due for a separate and distinct day.

The contract clause in regard to the duplication of overtime pay definitely refers to two or more classifications for overtime worked on one day.

HOLIDAY PAY IN LIEU OF SICK LEAVE

It is always permissible for a union and a company to modify by mutual consent the terms of a contract currently in effect. Once they have agreed to such modification, both sides are bound to observe its terms and cannot evade their responsibility by taking the position that the provisions that were modified are still controlling. According to the furniture workers' union (CIO), the foregoing was exactly what an upholstery manufacturing company tried to do when it refused to pay one day of sick leave to each of nine of the employees in the concern.

As originally negotiated, the contract provided that eight days of

sick leave would be granted to all employees covered by the contract. The time was to be taken off during the 12-month period covered by the contract. There was a further stipulation declaring that "any questions arising as to the application of this clause shall be mutually agreed upon by the employer and the union." After the contract had been in effect for some time, the management and the union entered into a formal written agreement providing that all employees would receive in lieu of sick leave, holiday pay for seven enumerated holidays. In addition, pay for the eighth day of sick leave was to be given to every employee at the termination of the contract, regardless of whether or not any of the employees had actually been out sick at all. The union pointed out to the arbitrator that the nine employees involved in the dispute had not received this extra day's pay.

The company took the position that the pay for the eighth day was to be due only to workers who had been in the employ of the concern during the entire contract year. The nine employees who had not been paid had been in the company's employ for less than a full year and therefore were regarded as ineligible for the full amount of the sick leave. The company asserted that it also had the right to decide this matter unilaterally, when it was unable to get together with the union as to the application of the contract clause governing the sick leave. Failing an agreement, the management asserted, it was free to put its own interpretation on the clause in question.

On the face of the contract itself, as well as the supplemental agreement which substituted holiday pay for sick leave, the arbitrator concluded that he had no option but to find for the union. The arbitrator noted that the contract language clearly stated, "an eight-day sick leave shall be given to *all* employees covered by this agreement." No exceptions were made to exclude employees on the basis of limited length of service. The arbitrator also noted that the company had followed the practice of paying holiday pay to all employees who were on the payroll at the time the holiday occurred. Hence in providing for payment of the eighth day of sick leave at the time of contract termination, and for payment of seven holidays instead of sick leave as such, the company had definitely established the practice of making such payments to employees, irrespective of their length of service. The arbitrator rejected the company's contention that in the absence of a mutual understanding, it was free

to do as it chose. He held that the contract clause was binding on the company, that it was clear and specific and that the nine employees concerned in the dispute were all entitled to a day's pay as a sick leave allowance, upon the termination of the contract.

NIGHT SHIFT PREMIUM FOR CUSTODIAL EMPLOYEES

Three separate disputes relating to how contract clauses on night shift premiums should be interpreted and applied, arose in a single company. All were referred to arbitration. The company was a hardware manufacturing concern and the labor organization representing its employees was the electrical workers' union (CIO). Each of the cases summarized below brings into focus diverse factors that have to be taken into account by arbitrators in deciding disputes over premium pay.

Custodial employees eligible for night shift premiums Under the contract clause that read as follows: "All employees on a regularly scheduled night shift shall receive a bonus of ten per cent. of their earnings," five watchmen and powerhouse workers filed a claim for special night shift payments.

At the arbitration hearing, the union representing these employees rested its case solely on the precise language of the contract. As noted above, it said that *all* employees on the night shift were entitled to a 10 per cent bonus. Clearly, the union urged, these workers were covered by the contract provision, both by the express language and by the failure to exclude them specifically.

On its own behalf, the company insisted there had been no intention on the part of either side to pay a night shift bonus to watchmen or powerhouse employees when the contract clause pertaining to such payments was agreed upon. The company presented in evidence a notice to employees concerning an earlier agreement entered into with the same union. In that notice was a statement to the effect that watchmen, powerhouse employees, janitors, etc., would receive their regular rates of pay under certain conditions when production employees would be paid time and one-half. Throughout the term of the earlier agreement, as well as during all the time elapsing since the current contract went into effect, none of the employees engaged in these occupations had ever received a 10 per cent bonus for night shift work. Accordingly, established practice, as well as the implied understanding between the company and the union, excluded these employees from the night shift premium.

This case was heard and decided by a board of arbitration. The board noted that the recognition clause in the current agreement included all employees paid on an hourly basis. Watchmen and power house employees were of course paid on that basis. There were certain exclusions from coverage, by agreement, but these two occupational groups were not among those excluded. Then, noting the fact that the clause relating to the night shift bonus provided for no exceptions, the board ruled that the workers named in the union complaint were entitled to receive the 10 per cent bonus provided by the company.

Night shift premium versus overtime pay The second case presented by the union centered about the question as to whether or not employees working on the day shift should receive the 10 per cent bonus for any or all of the hours worked by them after the completion of their regular shift. The union did not go so far as to contend that the 10 per cent bonus had to be paid if the time worked after the completion of the first shift represented a negligible proportion of the total hours worked. The union did contend, however, that the 10 per cent bonus had to be paid to workers who spent most of their working time on the night shift, and that for such employees the 10 per cent bonus was payable for all hours after termination of the day shift hours.

The management spokesmen expressed the view that the night shift premium clause was intended to apply only to employees who spent the majority of their working hours between 7 P.M. and 7 A.M. In all cases where the majority of the time had been put in within this 12-hour period, the 10 per cent bonus had been paid.

The arbitration board reached the conclusion that there never had been a clear-cut understanding between the company and the union as to the hours that were to be covered by the night shift bonus. Looking into the history of the question, the board noted that the company and the union had jointly filed with the War Labor Board a request for approval of the contract clause providing for a 10 per cent premium. In the joint application, there was reference to the payment of the night shift bonus for hours worked between 6 P.M. and 6 A.M. Consequently the arbitration board stated that it might be assumed that the intention of the parties was to consider the period from 6 P.M. to 6 A.M. as representing the normal night shift for which the 10 per cent bonus was to be paid to anyone doing any work within these hours.

On the other hand, the board also noted the union's admission that when the bulk of the hours were worked during the day shift, and a minority of the hours after the end of the day shift, no 10 per cent bonus was payable. Thus the only thing left for the arbitration board to determine was when a regularly scheduled night shift began. The board then ruled that employees who worked all of their time or the majority of their time on a regularly scheduled night shift, were entitled to receive the 10 per cent bonus for such night hours.

Premium for special shift A few months after the decision in the case cited immediately above, the arbitration board was required to decide still another dispute. This dispute arose over the meaning of the arbitration board's prior decision, as it applied to workers in several departments in the company who were employed on a special shift with regular hours from 3 P.M. to 11 P.M. The company maintained that this working schedule did not constitute a night shift within the meaning of the award. It argued that the intent at the time the contract was entered into was to pay the night shift bonus for hours worked between 7 P.M. and 7 A.M., provided that the majority of the hours worked were during that period. Hence, as the company pointed out, it had paid a 5 per cent bonus to the employees working on a 3 P.M. to 11 P.M. shift. The union had acquiesced in this practice, so the company asserted, and did not raise the question as to its propriety for nearly three years after the original contract clause went into effect. The union took a contrary view. It claimed that the understanding between the parties in negotiating the contract clause was that it should apply to all hours worked after the conclusion of the first shift. The employees in the departments concerned came to work at 3 P.M., after the first shift had concluded its regular tour of duty. Consequently, the union argued, they were assigned to a "regularly scheduled night shift." The union further urged that the practice before or after the signing of the contract should not be given any weight, for the clear language of the contract, without any qualification, required the 10 per cent bonus to be paid to the employees on the 3 P.M. to 11 P.M. shift.

In the opinion of the board of arbitration, only a clarification of its prior decision was needed. It then proceeded to render an award of clarification, holding that the employees on the 3 P.M. to 11 P.M. shift were entitled to the full 10 per cent bonus, instead

of the 5 per cent bonus that had been paid by the company. In making this award, the arbitration board held that its conclusions were inescapable, first because the company itself had recognized the distinction between the workers on the 3 P.M. to 11 P.M. shift and the first shift workers, and secondly because the contract did not distinguish between one type of night shift and other types. Any other conclusion, the board continued, would result in its modifying the contract, and this the board had no power to do and had not done in its previous decision on substantially the same issue.

BASIS FOR COMPUTING VACATION PAY

To some folks it might seem fantastic that disputes should arise over carefully and clearly worded vacation plans that are embodied in a contract. And yet, such disputes do arise, despite the intent of both parties so to word the vacation provisions as to try to prevent any possible ambiguity.

The following vacation section written into the contract by a small tool company and the electrical and machine workers' union (CIO) would certainly appear to be specific enough.

All regular employees of the company covered by this agreement who have been on the payroll of the company continuously for one year prior to July 1 of any year in which this contract is in effect, shall be granted one week's vacation with pay. All regular employees of the company covered by this agreement who have been on the payroll of the company continuously for five years prior to July 1 in any year in which this agreement is in effect, shall be granted two (2) weeks' vacation with pay.

Vacation pay will be based on the employee's *straight time pay* based on his average work week for the twelve (12) months prior to said July 1.

Holidays occurring during vacation period shall count as part of said vacation.

Employees who leave for the Armed Services prior to vacation period and are entitled to a vacation, shall receive their pro rata earned vacation pay at the time of leaving the company's employ.

In the event of the death of an employee while in the employ of the company, his pro rata earned vacation pay, if any, shall be paid to his widow or legal representative. Payment to either shall relieve the company from any further liability hereunder.

The company is to have the right to determine when and how vacations shall be scheduled and whether or not the plant shall operate or close down during part or all of the vacation period. If possible, vacations shall be scheduled between June 15 and October 1 of each year. Company is to have the option of requiring the employees who are entitled to more than one week's vacation, to work during the second week, or a portion thereof in lieu of vacation, such employees to receive their vacation pay.

Here is a clear-cut case of contract interpretation. The dispute submitted to arbitration read: "Should the employees involved receive a full week's pay as vacation pay? If not, what amount should they receive, pursuant to the contract now in effect between the parties?"

The controversy hinged over the question as to what constituted a week's pay and correspondingly, what constituted two weeks' pay for those employees entitled to a vacation of two weeks.

Note the second paragraph of the vacation section, which expressly states that vacation pay will be based on the employee's straight time pay for his average work week for the 12 months' period prior to July 1 of the contract year.

Union's contention It was the view of the union that the basis for computing vacation pay should be the normal scheduled work week in the shop. This was 50 hours weekly. Prior to entering into the contract with the union, the practice of the company was to compute vacation pay on the scheduled work week, regardless of the hours worked by the employees individually. It was the understanding of the union representatives, they maintained, that in negotiating the contract the same practice would be applied, regardless of the verbiage used in the vacation provision. Since the current scheduled work week was 50 hours, and that schedule had been maintained during the entire time while the contract was in effect, the union insisted that employees who were entitled to vacation pay for one week should receive 50 hours' pay, based on their own straight time hourly rate, and that those who were entitled to two weeks' pay should receive 100 hours of pay on the same basis.

As a further point, the union argued that in the current contract there was no requirement for any minimum number of hours of work per week and it was never conceived by any of their officials that the company could or would construe the language relating to the "average work week" as applying to the average hours worked by any individual employees during a 12-month period. Consequently, the union urged that the arbitrator rule that individual employees were entitled to vacation pay based on the scheduled work week, that being the average work week of the shop itself.

Company position There was no hesitation on the part of the management spokesmen in admitting that the current vacation clause was not as good as the company had previously granted to employees before recognizing the union. The management spokes-

men maintained that in the course of give-and-take bargaining on a number of issues, an accord had been reached on the vacation clause which was admittedly inferior to the type of vacation plan previously granted. That accord had been reached in consideration of a number of other concessions made by the company on other items.

The union was quite aware of the management's intent and purpose, the company spokesmen asserted. To prove their contention, they cited the original proposal presented by the union:

Paid vacations shall be granted as follows: Employees with six months' total service shall receive one-half week; over six months, but less than one year, one week; one additional day for each additional year of service, up to two weeks for five years' service. Vacations shall be based on average work week, but not less than 40 hours.

When vacation time includes a holiday, an additional day of paid vacation shall be granted. Employees whose services are terminated for any reason, shall receive with their final pay their accumulated vacation pay.

The union's proposition was rejected by the company, and at the insistence of management, the vacation section, which it drafted and insisted on, was ultimately agreed to by the union and embodied in the contract. The company stressed the fact that the final contract clause expressly provided for computation of vacation pay for every employee on the basis of "his average work week," and not the average work week for the plant. In conclusion, the company insisted that as the language of the contract was very clear, the arbitrator had to be bound by that language, regardless of any assertion by the union to the effect that a different understanding had been reached orally in the process of negotiation.

Arbitrator's findings The arbitrator considered it significant that the union representative, who was the chief spokesman for it in negotiating the contract, did not appear at the arbitration hearing, and no statement was introduced on his behalf that would indicate he had a different understanding from that of the company as to the meaning of the words, "his average work week." All evidence presented by the union in support of its position was brought forth by union committeemen, who apparently thought the intent of the contract was to base vacation pay on the scheduled work week. In the light of the uncontradicted evidence submitted by the company to the effect that the final contract language represented a change from the union proposal, and was made at the insistence of the company but with the consent of the union, the arbitrator considered

himself bound to accept the company's point of view and to rule that vacation pay should be computed on the basis of each employee's average work week.

VACATION RIGHTS ON RESIGNATION

When vacation plans were originally instituted for hourly rated workers, many if not most employers felt that the granting of such vacations was a privilege to be given or withheld at their own discretion. Gradually, as vacation plans began to be written into union contracts, serious questions arose as to the extent of the employers' obligations, once they were committed to paying vacations.

Typical of these questions was the dispute that arose between the management of a bakery and an AFL union representing its drivers.

The contract clause in question read as follows:

Two weeks' vacation shall be given to all regular wholesale sales drivers who have been in the continuous employ of the bakery for a period of five years. Vacations will be spread over an entire year, starting with May 1, to April 30 of the following year, with the provision that a vacation schedule be posted and the vacations picked during the first week in April for the ensuing year.

One of the company's drivers, Mr. Y., who had been employed for more than five years, decided to take his vacation during the last week of August and the first week of September. But it happened that Mr. Y. obtained a better job and therefore offered his resignation two weeks before his vacation was due to begin. At the company's request he worked for 11 days after having given notice. On the last day he worked he demanded his vacation pay. The company refused to give it to him.

The union contended that the contract clause was clear and specific. Its interpretation was that the contract guaranteed all employees with five years' service two weeks of vacation pay at any time after April 1 of any 12-months period, provided they had the requisite number of years of service. Had Mr. Y. decided to take his vacation the first two weeks in August or at any time earlier, there could have been no question as to the company's obligation. The fact that he had left the company's employ a few days before he would otherwise have gone on vacation was regarded by the union as being immaterial.

The company admitted that Mr. Y. would have received a vacation with pay had he not chosen to resign just before his scheduled

vacation period. But its spokesman argued that nothing in the contract required the company to pay vacation allowances to persons whose services were terminated for any reason. By determining for himself the period when he would leave on vacation, and then quitting his job before that period, the company asserted, Mr. Y. had forfeited any rights he otherwise would have had to his vacation.

Arbitrator's decision The arbitrator pointed out that it was quite obvious from the language of the contract that vacations were granted in consideration of the length of time that an individual had been working continuously for the firm. The provision for picking and posting vacation periods, he observed, was included in the contract to give first choice to employees on the basis of their seniority, and not to require an employee to forfeit any claim to a vacation if the time originally picked by him proved unsuitable. The arbitrator ordered the company to pay Mr. Y. the two weeks' vacation allowance. His award was accompanied by the following succinct explanation:

Vacation time is considered a reward or bonus and frequently vacation pay in lieu of vacation is granted by mutual agreement, if the worker cannot be spared from his job. While the contract between the parties is not clear on the point of vacation pay in lieu of vacation, it is quite obvious that the resignation of an employee who had earned his vacation time, is not ground for the firm's refusal to pay him for same.

VACATION ELIGIBILITY OF LAID-OFF EMPLOYEES

A dispute arose between the management of a machinery manufacturing company and the electrical workers' union (CIO) as to the meaning and effect of the following contract clause:

In computing the length of service necessary to make an employee eligible for vacation, any time less than three months lost due to a lay-off for lack of work shall be counted toward such length of service.

The question at issue was whether or not this clause applied to layoffs occurring before the effective date of the current contract, as contended by the union, or only after the effective date of the contract, this being the contention of the company. According to the union spokesmen, their negotiators had deliberately insisted upon the inclusion of the contract clause just cited. They had done so to make certain that employees affected by wholesale layoffs that had become necessary in 1944, would not lose their vacation rights, if otherwise eligible for vacations.

The company took the position that the status of employees who had been laid off at any time prior to the negotiation of the current contract, had to be governed by the terms of the previous contract. In other words, so the company argued, the clause relating to layoffs of less than three months could have no other meaning than to preserve vacation eligibility to persons laid off during the term of the existing contract. And its spokesmen went on to point out that the previous contract contained no provision for bridging the service, and therefore the vacation rights, of persons laid off for any prescribed period whatsoever.

This case was heard by a board of arbitration. The board concluded that the current contract undoubtedly applied to all employees who were eligible for a vacation in accordance with the time worked by them prior to the signing of the contract. Obviously, it was meant to apply to all employees who had worked for the company prior thereto. Otherwise, if only future service were to be counted in determining vacation rights, no one would have been entitled to a vacation at all, under the terms of the current contract. The board further declared that unless specifically provided otherwise, all contracts setting forth vacation plans necessarily must contemplate that eligibility for vacation benefits is determined on the basis of length of service during periods preceding the effective date of the contract.

10. DISPUTES NOT CONTROLLED BY CONTRACT CLAUSES

Many times neither the union nor the management can be absolutely certain what contract clauses, if any, apply to situations that have given rise to a dispute between them. When in doubt, arbitrate. That is the course of action frequently taken by both parties. They have little to lose and plenty to gain. At least that is what they often tell their associates.

Then there are also situations where it is clear to everyone that the parties have failed to write into their contract provisions that would determine the rights of the company or of the union in situations that were not foreseen at the time when the contract was negotiated. When such developments occur, both sides usually do not want to reach an impasse. Something has to be done. Each party may at first take an adamant position. The management may assert it has the right to change a policy or a practice in the absence of a contract clause limiting its right. The union may insist that the company is bound by past practice and cannot change the terms of employment or working conditions on a unilateral basis. Here, arbitration is the only logical and natural solution.

Moreover, where contract provisions are loosely or ambiguously worded, disputes may develop as to whether or not a given contract clause was actually intended by either or both parties to apply to a certain set of conditions. One side may take the position that the matter in dispute is controlled by the terms of the contract itself, and therefore the grievance raised by the other party is not arbitrable. But, as has been pointed out in Chapter I, the question of the arbitrability of a dispute is always a proper subject for arbitration. Hence, cases frequently arise where arbitration proceedings are invoked for the sole purpose of determining whether or not problems that appear to one party to be open to contract interpre-

tation, have in reality been determined conclusively by specific clauses written into the contract.

It is usually the union representatives who take to arbitration most of the cases of the types that have just been briefly summarized. This is to be expected. When negotiating a contract, it is a common practice of the management representatives to seek to limit its terms to matters relating to current working conditions. Management frequently assumes that if the exigencies of its business require changes in working conditions, the existence of a union contract will not prevent it from taking whatever action it regards as appropriate under the circumstances. Naturally the union will protest any drastic change in terms of employment brought about under such circumstances, particularly if there is an adverse effect on its membership. And it has at least the right, under most contracts, to seek to determine through arbitration whether or not the management has gone beyond the terms of the contract in instituting changes which might be limited by provisions set forth in the contract itself.

The cases selected for summary in this chapter can serve as guides in two respects: (1) to give an indication as to how questions involving the absence of contract clauses, or uncertain application to some situations, are likely to be decided in arbitration proceedings, and (2) to indicate the types of problems which should be covered by specific contract language when new contracts are being negotiated.

PROMOTION AT DISCRETION OF MANAGEMENT

The textile workers' union (AFL) filed a complaint against a cotton goods manufacturing company charging that Mr. O. had improperly been denied a promotion to the job of card fixer. The union also sought back pay for the time elapsing after another employee had been selected for this position.

In support of its position, the union pointed out that the company had previously followed the policy of promoting competent employees to better positions when vacancies occurred. In the case of Mr. O., however, the company had passed him by and given the job to Mr. G., who had had much less seniority. The union further pointed out that in previous years Mr. O. had been given temporary assignments as card fixer in a number of instances, and in the opinion of its officials was much better qualified for the job than Mr. G.

It was further explained that Mr. G. had been employed by the mill for only about 15 years, in contrast with Mr. O.'s length of service of about 30 years.

The company went to considerable pains to develop statistical evidence in support of its position and did not rely solely on its technical rights under the contract. The management presented to the arbitrator evidence showing that Mr. G. had worked as a card fixer and on a closely related job for a total of 4700 hours, up to the day of the filing of the grievance. In contrast, Mr. O. had worked a total of only 1300 hours on the two related jobs.

Moreover, the company insisted that it had the right to determine what experience and other qualifications a man had to possess in order to be entitled to a card fixer's job. Its spokesman insisted that Mr. G., in the light of his own work record and general knowledge and ability, was much more capable than Mr. O. As to the union's contention that the company's policy was to fill better jobs primarily on the basis of seniority, if the senior worker was competent to fill the vacancies, the company maintained that there had been several other instances where employees with less seniority had been assigned to the job of card fixer without any complaint having been filed by Mr. O. or the union.

Finally, the company spokesman asserted, there was no provision in the contract limiting its authority to select employees for better jobs. Indeed, a former negotiating committee for the union had recognized that it was the prerogative of the management to advance those employees whom it considered to be better qualified, regardless of seniority.

Arbitrator's decisions In deciding this case, the arbitrator considered that the controversy boiled down to four separate questions:

1. Is the company obliged, under the contract, to recognize seniority in advancing workers from one job to another?
2. Has the company, by its past practices, laid down a pattern which must be followed in all cases?
3. Is the company acting within its rights in determining the qualifications required on the job to which a worker is advanced, and can its conclusions in regard thereto be questioned by reason of any provision in the existing contract?
4. Did the company in this instance discriminate against Mr. O., and favor Mr. G. for reasons other than it claims, namely superior ability and fitness of Mr. G. to fill the position in question?

After formulating the questions for the purpose of identifying the real issues in the dispute, the arbitrator answered them as follows:

Arbitrator must answer "no" to questions 1, 2 and 4, and as to question 3, he is bound to answer "yes" in the absence of any proof that the company is not acting in good faith in exercising its rights. Arbitrator is mindful of the fact that the union has charged the company with showing favoritism to some workers in the past, prior to the union's becoming bargaining agent for the workers. Whatever may have occurred then, didn't seem to be indicated in this case, as is further supported by the fact that Mr. O. had been offered higher responsibility and better paying jobs but had declined to take advantage of such opportunities.

Arbitrator therefore is unable to rule in this instance that Mr. G. be demoted and Mr. O. be given his job.

Arbitrator urges the union and the company to reach an accord in regard to method to be followed in making promotions, which will more clearly define the rights and responsibilities of both the company and the union.

MANAGEMENT RIGHT TO SELECT SUPERVISORS

It may well be that the parties to a contract have agreed to recognize seniority as the main basis for promotion of employees to better jobs. Even so, it does not necessarily follow that such a contract clause applies to selection of employees to fill vacancies in supervisory positions. If the contract limits the application of the seniority rule to jobs expressly covered by the agreement, then management still may have unfettered discretion in picking employees or outsiders to fill jobs of a supervisory nature.

A dispute involving this issue arose between the carpenters' union (AFL) and a casket manufacturing company. The union contended that Mr. B. was entitled to a position held by Mr. W., because of the former's greater seniority.

Contract clause involved In the course of the arbitration proceedings, both the union and the management cited specific contract clauses which in the opinion of their spokesmen justified their respective positions. The following clause was the position relied upon by the union:

Preference in promotion or advancement shall be based on seniority of continuous service, as well as on ability and competence to fulfill the requirements of skill, knowledge and training for the job.

The company cited the following two clauses:

It is understood that the term 'employee' as used in this agreement shall not include foremen and other supervisory employees who do not perform production work . . .

Management: The business of the company, management of the plant or the factory, and the direction of the employees, including the right to transfer an employee from one department to another, to hire, suspend or discharge for proper cause . . . shall rest with the employer.

Since the contract clauses were written in clear and unequivocal language, the issue narrowed itself down to the matter of the nature of the job held by Mr. W., which in the opinion of the union should have been assigned to Mr. B. Here the arbitrator was confronted with the necessity of determining not the meaning of the contract, but rather what the factual situation was as to the precise nature of the job in dispute.

Before Mr. B. was inducted into military service, he had been employed as a packer's helper. Upon his reinstatement with the company three years later, he was assigned to a job as a packer, at the scheduled rate for that job.

The union insisted that Mr. B. should have been assigned to the job of foreman of the shipping department. This job actually bore the title of "shipping clerk," but the management declared that it was in fact a supervisory position at the foreman level.

According to the union, the shipping clerk's job was substantially the same job previously held by Mr. B., with some expansion of the duties. The union insisted that Mr. B. had the skill, ability, and competence to perform the work satisfactorily and therefore should have been given a trial on the job. As to the extension of the duties in this position, which in the opinion of management made it currently a supervisory position, the union produced testimony to the effect that before Mr. B. had entered military service he had full charge of deliveries, including the giving of orders to drivers, the making out of invoices, and performance of all related clerical work.

On the point of the changing of duties, the company disagreed emphatically with the union. According to the management, the additional assignments which never had been performed by Mr. B. included: (1) making recommendations as to the hiring and firing of some sixteen employees in his department; (2) supervising and directing the work of these sixteen employees, including the planning and routing of drivers; (3) issuing bills of lading, supervising packing methods, and handling collections. It was these additional duties, none of which had been performed by Mr. B., that

made the position a supervisory one, and brought it entirely outside the scope of the present contract.

Arbitrator's decision The arbitrator noted the union's reliance on the contract clause requiring preference in promotion on a seniority basis. But the arbitrator also noted that this clause was completely silent with respect to promotion to jobs outside the bargaining unit.

It became necessary, the arbitrator pointed out, to read the clause on preference in promotions in conjunction with the two other contract clauses cited above. Of particular significance was the fact that the term "employee" was defined as excluding foremen and other supervisory employees. This provision, the arbitrator held, was obviously meant to preclude any such jobs from being covered by the agreement at all. Hence the union had no valid basis for asserting the right of any of its members to be promoted to such a position. Accordingly the arbitrator ruled that the company had no obligation to give Mr. B. a trial on the job of shipping clerk or foreman.

AVERAGE EARNINGS NOT GUARANTEED

In the contract between the textile workers' union (CIO) and a woolen mill, there was no specific provision defining how piecework employees should be compensated for loss of earnings occurring through no fault of their own. The company, however, had in certain circumstances paid such employees average earnings when their output was curtailed on account of conditions beyond their control. The union therefore asserted that this practice should be continued. In support of its contention it cited contracts with other woolen mills containing specific provisions for varying amounts of pay up to average hourly earnings for workers whose output was adversely affected by similar circumstances.

The situation complained of by the union was a temporary one. A new style of stock had been introduced and for a period of several months a different and inferior yarn had been used. The yarn was inferior only in the sense that it was more difficult to weave and employees therefore could not produce their normal output. In order to avoid a layoff, the available stock of yarn had been used until an improved stock could be obtained. According to the company the only alternative would have been to lay off the employees whose earnings suffered during the temporary period of several months.

Two contract clauses were cited to the arbitration board which heard this case. The union insisted the following clause was applicable:

Nothing in this section shall prevent either party from requesting at any time a revision of the rates of pay which in its opinion should fairly be made because of changes in work-load, changes in methods of production, changes in equipment or processes. . . .

Its spokesmen urged that the process of weaving the particular style that gave rise to the dispute was changed to the extent that the output was slowed up and the original piece rate became insufficient. Consequently, in lieu of a change in the rate, the employees were entitled to the difference between their actual piecework earnings and their previous average earnings.

The company insisted that the only provision in the contract which applied to the dispute was the following:

Each employee in a piece rate job (except learners and handicapped workers who may be exempted by agreement between the union and employer or through the arbitration provision of this agreement) shall be guaranteed a minimum rate arrived at in the following manner: 15 cents per hour shall be added to the industry average straight time piece work earnings and 80 per cent of such total guaranteed as such minimum rate.

The management urged that provisions contained in contracts with other mills had no bearing on the issue. Its own contract provided for a guarantee of a minimum rate and not of average earnings under any circumstances.

According to the management the union's proposal would result in a general guarantee of average hourly earnings to employees while working temporarily on inferior stock. Certainly this arrangement was never contemplated when the current contract was negotiated. Management spokesmen went on to point out that the arbitration board was not authorized to add anything to the present contract, and that any practice heretofore followed by the company on a voluntary basis should not and could not be used by the arbitration board for the purpose of imposing such practice upon the company.

Findings of arbitration board The board explored the factual situation, in addition to considering the contract issues involved. It found that the weavers did indeed suffer a decline in earnings over a period of several months. But the board concluded that there

was no clear-cut provision in the contract requiring the company to make up to piece workers losses sustained by them in their average hourly earnings under conditions such as prevailed in this case. The board therefore declared that it was unable under the contract, regardless of the merits of the case, to "legislate" regarding the proper disposition of the matter.

Despite the board's finding it lacked authority under the contract to make an award, it did recommend a solution, being careful however to avoid directing the parties to adhere to its recommendations. In view of the company's willingness in past situations to make up some or all of the loss of earnings of piece workers under somewhat comparable conditions, the board recommended that the parties themselves ascertain the actual amount of the loss sustained by the workers for the temporary period and endeavor to agree on a suitable adjustment in their earnings.

GENERAL ADJUSTMENT IN PIECE RATES

Once in a while a condition will develop where both parties recognize something must be done, despite the absence of contract provisions setting forth how the requisite adjustments should be made. That was the situation confronting a group of New England shoe manufacturers and an independent union which had a uniform contract with these concerns.

The problem arose just before the United States entered World War II. The shoe manufacturers were being requested by the Procurement Division of the Quartermaster Department to make substantial quantities of army shoes. In quoting their prices on such shoes, the manufacturers had of necessity to take into account their labor costs, which happened to be much higher than the labor costs of manufacturers located in other areas. If the manufacturers were to bid successfully on army shoes, they could not withstand any appreciable increase in their labor costs. On the other hand, the shoe workers themselves were confronted with a serious problem. Most of them would have been able to step quickly into higher paying jobs in other types of defense plants in the same area. They preferred to remain with their own concerns, but not at any greater financial sacrifice.

Thus both parties were aware of the predicament of the other side. Both wished to have an appropriate adjustment in the piece rates for production of army shoes. They were, however, unable to

agree on the amount of the increase and at the time that the arbitration proceedings began, were unable to solve the larger problem as to how they could obtain contracts for army shoes without incurring losses to the manufacturers or relative loss in the earnings of the workers, compared to what they could obtain elsewhere.

Hence the whole problem was thrown squarely in the lap of the arbitrator. The specific question for submission was what adjustment, if any, should be made in the piece rates for production of army shoes.

Union position The union sought a 15 per cent adjustment in existing piece rates. Its spokesmen were sure an increase would be supportable because the acceptance of large contracts for army shoes by the manufacturers would reduce their overhead and lessen the unit costs, despite the advance in labor costs. They further maintained that the employees of these particular manufacturers represented the most talented and experienced craftsmen in the industry. Since the quality and quantity of their output would be greater than that of the employees of other manufacturers, they were entitled to preserve the wage differentials they had always enjoyed over employees of concerns located elsewhere. Finally, the increased cost of living certainly warranted a proportionate adjustment in their earnings.

Position of manufacturers The manufacturers pointed out that their piece rates had been so high as to prevent them from bidding successfully on army shoes. They were in no position to accept government contracts at a loss, and their own preliminary experience in government contracts indicated they would incur a serious loss if anything like a 15 per cent increase were to be awarded. Their spokesmen expressed a willingness to consider an adjustment in piece rates, provided this would not result in the elimination of any chance on their part to obtain contracts for army shoes.

Findings of arbitrator At the request of both parties, the arbitrator arranged to have an extensive study made of piece rates being paid by other manufacturers for the same operations, as well as of the average hourly earnings and comparative output of employees in the shoe industry in all of the major manufacturing centers. The arbitrator was also given access to the manufacturers' records pertaining to cost calculations.

After numerous joint and individual conferences with the parties, it became apparent to the arbitrator that the Quartermaster De-

partment should be apprised of the situation. It was the arbitrator's view that the procurement authorities would undoubtedly give consideration to the requirements of both the workers and the manufacturers. He arranged for conferences between the Quartermaster Department to ascertain the feasibility of awarding army contracts to these manufacturers at prices which would make possible increases of 10 per cent in the current piece rates. When the Quartermaster Department agreed to award contracts for army shoes at prices that would make this increase practicable, the arbitrator then entered an award increasing piece rates for army shoes by 10 per cent. The arbitrator's award, he noted, was to apply for the duration of the existing contract, subject only to the possibility of a further wage opening in the event of other abnormal changes in cost of living, or other unforeseeable emergencies.

It is to be noted in this case that there was absolutely no contractual right on the part of either the manufacturers or the union to reopen the question of piece rates. They did so by mutual consent. The arbitrator would have had no authority to adjust rates unless they had delegated such authority to him. There were no contract clauses to interpret. The manufacturers and the union were confronted with a serious emergency and they decided to get the assistance of an impartial arbitrator to try to cope with it. In this instance, so both parties subsequently said, their hopes and expectations were more than amply realized.

SPEED-UP OR NEW JOB?

Once again there was a factual dispute as to whether or not a particular production operation constituted a speed-up of a previous operation or an entirely new job within the meaning of the contract. That was precisely the question that was submitted to arbitration by the rubber workers' union (CIO) and a plastics manufacturing company.

There were two contract provisions that were invoked in the proceedings—one by the union and one by the company. The arbitrator's determination as to which, if either, contract clause had any application, hinged entirely upon the development of the factual picture.

Union's contention It was argued by the union that certain employees known as pressmen were engaged in the production of a certain type of tile that was made with the identical presses that had

previously been used in the manufacture of another type of plastic material. With the introduction of the new type of tile, the same rate as had been used for the other product was maintained. After a short experimental period on a "one-platen" process, the management changed to a "two-platen" process. The output was doubled as a result.

There was no objection on the part of the union to the higher output through the use of the two-platen process. But the union contended the pressmen were entitled to a higher rate of pay, by virtue of the following clause:

In any case where a speed-up occurs, through increasing speed of present equipment or revamping of same, whereby the company's costs are lowered and maintained for a continuous period of ninety days and thereafter, the employees affected by the operation will receive a fair share of the savings involved retroactive for sixty days of this period. Any such share of savings is to be distributed at the discretion of the company and union officials.

The union argued that the presses used in making the new type of tile had been operated on a one-platen basis and the rate for the job had been set on that basis. Consequently, when the two-platen process was introduced, causing a 100 per cent increase in the output, the employees were entitled to a major proportion of the saving thus realized. Specifically, the union requested a 70 per cent increase in their rates.

Company's position The company denied that any official or standard rate had ever been set for the new processing of any kind of tile, by either a single or a double platen method. Production of this sort of tile had originally been on an experimental basis and was still going through the development period. To make this product economically and on a competitive basis, an entirely new type of press was going to be required. The new equipment had been ordered but had not yet been delivered. In the interim, the equipment ordinarily used for the pressing of other types of plastic was being used temporarily. Hence the company categorically denied that there was a speed-up of a preexisting process. Instead it argued that a different contract clause applied to the situation. Specifically, the company called attention to the last sentence of the following contract provision:

The company will forthwith undertake a job evaluation study with a view to eliminating intra-plant wage inequalities.

The job evaluation and wage adjustment are to be subject to the mutual

agreement of both parties, with the provision that any disputes thereunder will be subject to impartial arbitration by a technical arbitrator to be mutually selected by the parties and whose decision will be final and binding.

In the event new equipment is installed for any operation, rates for jobs on same will be decided by a mutually satisfactory job analysis and evaluation.

In further support of its position, the management maintained that the work involved in pressing the new type of tile was subject to a job evaluation study, first because it was a new operation and not a speed-up job, as the union contended, and secondly because this operation, even if it were not a new job, was subject, as were all other jobs, to the job evaluation and wage adjustment provision just cited. The temporary rates for the pressing of the new tile had been set as a result of systematic job evaluation. And the company proposed to revise the rates on the same basis after the new equipment, which had been ordered, was installed.

Arbitrator's findings The arbitrator was afforded an opportunity to observe the job as it was being performed, and to acquire first hand knowledge of the problem and its implications. He reached the conclusion that the contract did not clearly set forth the method to be followed in a situation such as was presented in this case. He decided that it was neither a case where a speed-up had occurred through intensifying the volume of output at a lower cost to the company, nor that it could be called, at the present stage, a new operation necessitating a job evaluation, as contemplated by the contract.

The clear facts of the situation, the arbitrator declared, were that the introduction of the manufacture of the new type of tile was mainly experimental. Pending the arrival of the new equipment, there was adequate basis for doing the job on the old presses with two platens instead of one. This was, however, an entirely temporary situation.

Were the arbitrator to uphold the union's position that this be considered a speeded-up job, and that the "profits" of the excess production be allocated to the workers involved, he concluded the arbitrator would then in effect be acknowledging that a rate had definitely been established when the initial experimental work on the new type of tile was begun on a one-platen method. The evidence did not warrant such a conclusion. Consequently, the arbitrator recommended, rather than ordered, that the management and the

union set a rate for the manufacture of this product by agreeing on a proper job evaluation for the operation.

After rendering this opinion, the arbitrator was requested by the parties to make a final and binding decision, instead of merely a recommendation. The arbitrator again reviewed these salient facts, and pointed out the lack of a clear-cut and authoritative contract clause that would exactly fit the situation. Nevertheless, since he was expressly requested to decide the issue, he did so. He concluded that the contract provision that came closest to meeting the requirements of the particular issue, was the one which involved the setting of new rates through job evaluation. Hence the arbitrator ruled that the rates for production of this new type of material be established by the management after a proper job evaluation study.

WAGE GUARANTEE NOT EXPRESSLY PROVIDED

After new wage clauses had been written into a contract, a union protested that the management had taken away something that the employees had enjoyed under the previous contract. The union was the textile workers (CIO) and the company involved was a large cotton mill. The rate adjustment put into effect in the new contract was an increase of 5 cents an hour on the base rates that enabled the workers involved in the dispute to receive on a daily guaranteed basis .789 cent per hour. At least that was the contention of the union. But on many days, because of difficulties over which the workers had no control, their earnings dropped below the allegedly guaranteed rate. Then, according to the union, the company unilaterally abolished the daily guarantee and reverted to the payment of a minimum hourly guarantee specified by the contract, this being some 13 cents lower. The union insisted that the guarantee of daily minimum earnings be restored, and this was the question that was presented for determination by the arbitrator.

The company insisted that the union had completely misinterpreted the results of the negotiations that led to a wage adjustment under the new contract. In the negotiation of this contract, the management had agreed to the establishment of a flat guaranteed minimum wage of 65 cents an hour, and guaranteed all piece workers they would receive at least that rate for every hour worked. At the same time, the management had acceded to the union's demands for an increase in piece rates of about 15 cents per hour. In so doing, all other guarantees applicable to piece workers were eliminated.

The management conceded that there had previously been an understanding under the earlier agreement which had the effect of guaranteeing to the workers involved in the dispute the opportunity to make on a piece-rate basis, earnings substantially higher than the guaranteed minimum applicable to all piece workers. It admitted that this prior understanding had not been specifically cancelled, but felt justified in agreeing to an upward adjustment of the piece rates. All other agreements or understandings were automatically abrogated, the management maintained.

The arbriator thought and held differently. His examination of the contract caused him to reach the conclusion that there had been no mutually agreed-upon cancellation of the prior understanding. He explained that he was in no position "to legislate for the parties on the basis of what may or may not be desirable." He was bound by the agreement entered into by the parties, and since no conclusive evidence of any modification of the agreement was presented, he declared he was without authority to rule other than that the guaranteed hourly rate that had been negotiated by the parties be embodied in the new contract.

SHIFT CHANGE ORDERED AT UNION REQUEST

As has already been mentioned, occasions often arise when either the management or the union wants to make a decided change in working conditions but has no right to insist on its position under the terms of the existing agreement. All either party can do is to use its powers of persuasion. Perhaps it is successful in inducing the other side to agree to refer the matter to arbitration. In that event and only in that event has it the chance of getting the change put into effect during the life of the current agreement.

While the agreement between the textile workers' union (CIO) and a worsted mill had some months to run, the union sought a change from a fixed shift to an alternating shift basis. It induced the management to agree to submit to arbitration the following question:

Should the company comply with the union's request that the second, or night, shift alternate every two weeks with the day, or first, shift; or should the arbitrator approve the present method, or offer a shift method, which is not fully in conformity with the present method followed by the company or proposed by the union?

The union request originated as a result of the action taken by its membership at a meeting at which an extended discussion

of the merits of alternating shifts occurred. By a very large majority, those attending the meeting voted in favor of alternating shifts. The union rested its case primarily on the mere fact that it was the will of its membership to seek a change in the shift arrangements. Of course it pointed out that the result of the change would be to enable the night shift workers to get some of the advantages enjoyed by the day shift workers. It further called attention to the fact that nothing new and unprecedented, as far as this particular mill was concerned, was being requested by the union. Several departments in the same mill had been on alternating shifts for some time. And this arrangement had apparently worked out to the complete satisfaction of the management and also the workers concerned.

The company presented its case both through direct testimony and through extended argument. It introduced evidence to the effect that a large majority of the workers in the mill were strenuously opposed to the change in shift schedules. For example, it introduced a petition signed by all of the workers in one department stating that they were against any change in the shift arrangement. The management went on to explain that it did not wish to go counter to the desires of its employees, but it was convinced that the vote of the union at a membership meeting did not in fact represent the real view of the majority of the workers. Most of the employees had stayed away from the membership meeting and apparently the only workers who attended were the night shift workers who obviously were in favor of the proposed change.

The company further argued that many of the day shift workers would become disgruntled if compelled to work on an alternating basis. If they left their jobs it would be difficult to replace them with competent employees. Then, too, the change to the alternating shift schedule would undoubtedly cause many hardships, due to the rearrangement of transportation facilities, and upsetting the routines of family life.

At the arbitration hearing, all employees of the mill were permitted to attend if they so desired. A considerable number of workers appeared and testified in opposition to the change. Some were union members and some were not.

Arbitrator's findings It appeared quite evident to the arbitrator that there was no universal accord among the employees as to the alternating shifts. At the same time, the testimony at the hearing

made it very clear that an orderly procedure had been followed by the union officials in calling a membership meeting and in the casting and counting of the votes on the proposed change in the shift arrangement.

The arbitrator declared that it was very desirable to have the union's action as taken by majority vote at a membership meeting, be binding upon the entire membership until such time as in the orderly course of procedure, the vote was reversed. Then going to the merits of the issue, the arbitrator declared that it seemed reasonable that any advantage pertaining to a day shift as against a night shift should not be retained exclusively by some employees as against other employees with equal rank and seniority. The arbitrator therefore concluded that a test of the workability of the alternating shift method should be made. He consequently ruled that the alternating shift program be introduced on a temporary basis and continued in effect for a six-month period. He further ruled that at the end of the six-month period the union was to have another membership meeting, at which all employees could vote for or against the continuation of the new schedule. He expressly stipulated that all employees were to receive ample notice of the meeting for this purpose so as to enable all persons having an interest one way or the other, to be present and vote.

ADJUSTMENT OF INDIVIDUAL GRIEVANCES

Not only arbitrators but also other experts in labor relations frequently have occasion to inquire into the reason for the inclusion of a particular type of contract clause which may seem to be unusual or unnecessary. The answer is almost invariably the same. That is to say, someone got hurt. Some situation developed where the rights or privileges of an individual employee were adversely affected. Or perhaps it was the management whose rights seem to have been injured. Someone made a note then and there to "put a stop to this sort of thing," when the next contract was negotiated. There is a vast variety of arbitration cases which involve individual grievances where no contract provisions were specifically applicable. Two such cases are cited below. They happen to have occurred in the same company—a hardware firm, the employees of which were represented by the electrical workers' union (CIO).

Written approval of leave of absence not required The seniority status of a union business agent brought about a dispute which

had to be submitted to arbitration. The business agent, Mr. M., had been an employee of the company for nine years. Then he was given a leave of absence in order to devote his full time to his duties as union business agent. After a year in that capacity, he resumed his regular job with the company. Some nine months later, he was inducted into the armed forces.

When he was discharged from the army and applied for reinstatement to his previous job, the company claimed that he had forfeited his seniority rights. It was the management's contention that he had failed to apply for and obtain a formal extension of his leave of absence, which had been granted to him only for a three-month period when he took over the job of business agent for the union. It was true that when he went back to work as an employee after a year's service as business agent, he was not told that the management regarded him as a new employee. It was also true that Mr. M. was not aware that the company had regarded his seniority as being limited to the date of his return to the plant, until after he had been reinstated following his army service.

The union maintained that when Mr. M. was first elected business agent he had received verbal notice from the management that he would be granted a leave of absence which would protect his seniority rights. Therefore from time to time he received formal letters extending his leave of absence. One such letter indicated that the extension was being granted even though written authorization was not a strict requirement under the contract or under company policy.

Mr. M. himself testified that he had received verbal authorization from one of the company officials to continue his leave of absence for the full period while he was engaged as a business agent. His testimony was supplemented by the introduction on the part of the union of a letter signed by an officer of the company which expressly stated that Mr. M. had been given a leave of absence for the entire period of a year while he was acting as business agent. (This letter was in the form of a recommendation which Mr. M. had sought while he was trying to obtain a better job.) In short, the union asserted that there was both verbal and written evidence indicating that the company had agreed to consider the entire year of service as a business agent as a leave of absence for Mr. M., during which period he retained full seniority rights.

It was the company's contention that Mr. M. had definitely lost his seniority rights when he neglected to apply for an extension of his leave of absence after he had first been granted a three-months' leave and then had had the leave extended for another three months. The management denied that there had been any verbal authorization for the extension of the leave. In fact it was the impression of the management that by failing to apply for an extension, Mr. M. had definitely intended to resign from his position in order to serve permanently as an employee and business agent for the union. The company also maintained that Mr. M. was fully aware of the requirement for written authorization for a leave of absence, or extension thereof, and his failure to ask for and receive such authorization automatically disqualified him from any rights to reinstatement.

The dispute was heard by a board of arbitration. The majority of the board expressed the opinion that the company had acted belatedly in its insistence on a written authorization for a leave of absence. The board went on to say the management's attitude appeared to be an afterthought and without the knowledge or understanding of either the worker involved or the union.

The board declared that the company undeniably had the right to limit leaves of absence and to require that any leaves be authorized in writing. Asserting that the rule should be applied reasonably and not capriciously, the board declared that Mr. M. should not be denied his seniority on the technicality of his not having insisted on a written note authorizing the extension of his leave, when it appeared obvious that had he done so, the note of authorization unquestionably would have been forthcoming.

Rate reduction on transfer within grade Shortly after VJ Day, when the company's war work was discontinued, Mr. W., who had been a milling machine operator, was transferred to a job as press operator at a rate 5 cents below his previous rate. His new job was in the same labor grade as his former job. The union contended that on a job within the same labor grade, he was entitled to receive his previous rate, particularly since he had worked in the department to which he was transferred, in former times, and had extensive experience there.

According to the union, there were two contract clauses that applied to this situation. These read:

1. When jobs are evaluated and reclassified, no employee within a classification shall suffer a reduction in his rate as a result of such reclassification;
2. The corporation shall assign employees to rates within the rate ranges, provided that no employee shall receive a reduction in his present hourly rate.

The company had an entirely different view of the picture. Mr. W. had been transferred to the press department, to a piece rate job, and was temporarily guaranteed a rate 5 cents above the minimum for the job, or 5 cents below his previous rate, until such time as he could qualify as a piece worker. The contract clauses cited by the union did not apply to piece workers, the company pointed out, since the whole job evaluation plan embodied in the contract pertained only to hourly rated jobs and not to incentive jobs.

The arbitration board indicated that it was somewhat perplexed by the opposing points of view, particularly on the question of the meaning of the clause, "no employee in a classification shall suffer a reduction in his rate as a result of such reclassification." The board went on to say that it was clear that Mr. W. had been moved from one job to another but in each case he remained in the same labor grade, and the rate range in each case was identical. Moreover, it had not been established by the company that Mr. W. actually was inexperienced and therefore not entitled to his former rate because of his inexperience. Nevertheless, the board was obliged to rule that there was no contract provision applying to a case of transfer such as this. Since it was not shown by the union that the transfer was made as a subterfuge to evade the provision of the contract prohibiting the reduction of individual rates, the board recognized its obligation to rule that the company did not violate any of the provisions of the existing contract by temporarily paying to Mr. W. a lesser hourly rate on his transfer to another job.

VETERANS' RIGHTS VERSUS SENIORITY

It is generally understood throughout the field of labor relations that management-union contracts must be modified to the extent that any of their provisions conflict with governmental laws or regulations that have a binding effect on either of the parties. But questions often arise as to whether or not a regulation or an opinion by a government agency has the force of law and thus actually modifies explicit contract terms. It was a question of this sort that arose between the woolen workers' union (AFL) and the management of

a woolen manufacturing company. The union filed a claim for loss of pay of a group of employees who had been forced to work less than their regular 40-hour week during a two-month period while the company was providing full-time employment to a group of returned veterans with less seniority than the nonveterans.

There was a carefully worded seniority clause in effect that differentiated between the so-called "normal" and "peak" force within each department. This contract clause read as follows:

Normal Forces and Seniority The company agrees to provide seniority lists based on the present employee classifications within each department and to submit the lists to the union for examination, and the company agrees to establish normal and peak forces within each department, as may be mutually agreed upon between the company and the union and set forth on the schedules to be attached hereto. During slack seasons peak force workers shall be laid off according to their seniority rights, the available work shall be distributed among the normal force, and peak force workers shall not be recalled until normal force workers are receiving full time work. Seniority rights shall apply during rehiring periods.

The corporation had complied fully with this provision until February 1, 1946. At that time the management issued an order requiring that returned veterans should be given superseniority when layoffs became necessary. The management did so after consultation with Selective Service officials and after having been informed by them that any veteran with a right to reinstatement had to be given full-time employment and protected against even temporary layoffs for his first year of employment after reinstatement. The company was relying on a statement of the Director of Selective Service, which declared:

A returning veteran is entitled to reinstatement in his former position, or one of like seniority, status and pay, even though such reinstatement necessitates the discharge of a non-veteran with a greater seniority.

The company also relied on an official interpretation of one section of the Selective Service Act, which stated:

"Absolute restoration of former job held mandatory under Section 8 without regard to relative seniority."

Finally, the company pointed out that the State officials of the Selective Service System had ruled that "The veteran's right of employment continues for one year after reinstatement, and may not be terminated by temporary shut-down or layoff."

According to the management, it was solely on the belief and information that the contract clause had been superseded by Selective Service regulations having the force of law, that it had temporarily given superseniority protection to returning veterans. The company acted in good faith, and the union did not immediately protest the management's actions. It was not until after the doctrine of veterans' superseniority was reviewed by a United States Supreme Court decision that the union filed a grievance that led to the arbitration proceedings.

Arbitrator's decision The arbitrator ruled in substance that all terms of an existing contract between a company and a union are binding unless a specific law or lawfully authorized directive order invalidated some of the terms of the contract. The arbitrator did not for one moment question the good faith of the management. He concluded, however, that the company had been relying on the *advice*, and advice only, of the Selective Service officials, since he found that these government officials had no authority under the law to issue regulations that had any legal effect. Moreover, he noted the fact that although the union had been informed of the company's consultations with Selective Service officials, and indeed, one union officer had participated in the conferences, the union had not agreed to be bound by any ruling made by the Selective Service Administration. Consequently, it appeared to the arbitrator that no modification of the existing contract had been agreed upon by the parties, and that the management had followed the advice of government officials at its own risk. Hence the arbitrator expressly ruled that the workers involved in the case who had been subjected to layoffs counter to the express terms of the contract, were to be sufficiently compensated for their loss of earnings.

SHOULD EMERGENCY SHUTDOWN BE REGARDED AS LAYOFF?

The case just cited is typical of a number of emergency situations that arose during the war to give rise to serious problems for management and labor. Many other wartime developments occasioned arbitration proceedings. The fact that unusual conditions developed during the war does not mean that similar problems may not be confronted in times of peace. Hence it is appropriate to cite still another case where the emergency was caused by the war, but where the same line of reasoning would apply, should a like emergency take place during ordinary peace time operations.

The munitions workers' union (AFL) filed a complaint against an explosives manufacturing firm as a result of a shutdown of one of its divisions that lasted two weeks. During the shutdown, nearly 200 employees were laid off. Rules of seniority were not strictly followed in choosing the employees to be laid off. It was the union's contention that the shutdown was a layoff within the meaning of the contract, and persons temporarily dropped from the payroll should have been selected on the basis of the least seniority.

It was contended by the union that certain employees who had been hired just prior to the shutdown were retained after the layoff of the employees with greater seniority. The union further alleged that foremen and other supervisory employees were assigned to work during the shutdown, which should and could have been done by regular employees with seniority rights. Then, too, the union maintained that its contract with the company did not provide for any so-called temporary layoff, and that each and every displacement during the two-week period should have been on the basis of seniority rank.

The company contended that the shutdown was of an emergency nature, not contemplated or controlled by the terms of the contract. The order to suspend operations had been given suddenly by a branch of the War Department, pending an investigation as to the effectiveness of certain materials being made by the company. The duration of the shutdown could not be foreseen. The management would have required several days, at least, to place all eligible senior employees on other jobs. If, meanwhile, the company had been ordered to resume operations, all the employees would again have had to be recalled from the jobs to which they had been transferred. This doubtless would have caused some delay in the resumption of work on essential operations.

So much for the facts and contentions of both parties. Both sides then went on to try to construe in their own favor the following contract clause:

Rules of seniority, as hereinafter qualified, shall prevail with respect to the laying off of employees for lack of work, the re-hiring of employees and the transferring and promotion of employees.

The qualifications on seniority rules referred to in the clause itself involved lengthy descriptions as to what plant seniority meant and what area seniority meant, but after hearing the arguments on both

sides and examining the contract phraseology, the arbitrator concluded that there was no language in the seniority provision which could be construed as having any bearing on the issue in dispute.

Thus, the problem resolved itself into a determination of the meaning of the phrase "lack of work," as it appeared in the contract. This the arbitrator held to mean a discontinuance or curtailment of work. Obviously that was what happened when the War Department ordered the temporary suspension of operations. On the other hand, the arbitrator felt the company was entitled to consider the emergency shutdown as an unusual situation, and since there was no definition of a temporary layoff in the contract, he ruled that the management was not required to place employees with seniority rights on other jobs prior to the expiration of six consecutive working days. He held in effect that the first six days of layoff were not compensable by the company, but the following week of layoff was compensable. He accordingly ordered the management to pay to employees laid off out of seniority order, a week's compensation, by reason of the management's deviation from the seniority provisions of the contract.

PAY BASIS FOR HANDLING GRIEVANCES

It may be thought, when the union and the management agree on the question as to whether or not shop stewards and other union officials should be paid anything for handling grievances on company time, that such a matter would be settled once and for all. Unless the basis for payment, as well as the conditions under which payments are to be made, has been specifically dealt with in the contract, disputes still may arise as to when and how much a steward is to be paid for his work in processing disputes under the grievance procedure.

The management of a metal working concern and the electrical workers' union (CIO) had negotiated two contract clauses relating to payment of union representatives for time spent in processing grievances. These clauses read as follows:

Meetings in all three steps of the grievance procedure will be at company expense if held on company property during the regular hours of an eight-hour shift. The Company will not pay for any hours in excess of the regular quitting time of an eight-hour shift, either on a straight-time or overtime basis. Any meetings held for the purpose of handling grievances outside of the company property will be on the employees' own time, whether they be held during or after working hours.

Stewards in Step 1, and the chairman of the union shop committee in Step 2, will be afforded reasonable time at company expense to investigate grievances submitted to them, provided arrangements are made with their respective foremen beforehand.

The significant portion of both contract clauses which gave rise to the dispute was the meaning of the term "company expense." The management considered its obligation under the contract to be limited to paying base rates. The union argued that average earnings should be paid.

The dispute was heard by an arbitration board. The positions of both parties were not confined to simple arguments on what appeared to be an elementary issue. Indeed, it took six closely written pages for the arbitration board to summarize the evidence and make its findings. The following review of the positions of both parties is presented with the idea of giving an indication as to how carefully and with what detail disputants find it advisable to prepare and present their respective points of view on an issue that might seem of small consequence but may actually involve substantial monetary payments.

The union's contention As summarized by the arbitration board, the union's main arguments were:

1. It was the intention of the company and the union when the provision concerning the grievance procedure and the investigation of grievances was written, that same will be "at company expense," which the union asserted was the entire expense. If the company's contention to pay less than the entire expense is to be sustained, it would result in a violation of the intent of the contract provisions.

2. It was the intent of the parties that workers would not sustain any loss in their earnings while attending to such union business. If the company's policy of paying to these workers their basic hourly rate, instead of their normal average hourly earnings, which is in excess of their basic hourly rate by approximately 20 per cent, is adopted, it would tend to discourage the workers in the performance of their duty as shop stewards or chairmen of shop committees, as they would sustain a loss in their earnings.

3. The company's proposal to pay only the basic hourly rate to piece workers would represent a discrimination between the piece workers, who would be subjected to a loss in their earnings, as distinguished from the hourly workers, who sustain no such loss, when they serve in similar capacity.

The union did not deny the fact that there had been no specific discussion between the union and the company during the negotiations preceding the acceptance of the contract as to whether the piece workers would receive earnings which they would have earned during such time, but the union insisted that that was its concept of what was to take place when it made this demand

of the company. The company agreed to include these cited clauses in the contract, and it did not consider it necessary to discuss this point.

The board's attention was called to the fact that the vacation provision in the contract provides for the payment of average hourly earnings as vacation pay. This understanding was reached before the agreement concerning the "Expense to be borne by the company for time spent in handling or investigating union grievances" was reached.

Also, Article X, Paragraph D, provides for the payment for time spent by employees in participating in arbitration meetings "at the straight time earned rate per hour."

The union also argued that when it first ascertained that there was a difference of opinion between it and the company concerning the method to be followed in carrying out the contract provisions cited when a complaint was presented by a worker some time in October, the company was paying the basic hourly rate rather than the average hourly earnings. When the initial grievance concerning this question was first taken up, it appeared that more than twenty days had elapsed from the time when the alleged violation took place, and the company refused to consider the grievance on the grounds that the contract prohibited the consideration of a grievance after the lapse of twenty days.

However, this did not prevent the union from presenting a subsequent grievance covering the same issue, as to future grievances;

The union also maintained that the company's position that it had been its practice to pay the basic hourly rate for time spent in the negotiation of the contract, should not be held as binding upon the union, because at the time this practice was followed, the contract had as yet not been agreed upon. Furthermore, the payment was a voluntary act by the company, and only hourly paid workers were involved.

Company position The company's contentions were summarized by the arbitration board as follows:

The company stated that it had never been its intention to pay for time spent on grievances other than the basic hourly rate of pay to such employees. The company pointed to the following:

1. It had always been its practice to pay for time spent by workers, while not actually engaged in production, only the regular hourly rate of such workers.
2. This practice was followed during the negotiations. The union was fully aware of it, and it was actually in effect after August 20, which was the date on which the union's request for such payment was agreed upon by the company and was followed through until August 28, 1946, when the contract was signed. This has been the practice ever since.
3. After the signing of the contract, when the company paid the basic hourly rate to stewards who attended to grievances and no exception was taken by the workers to this practice, nor by the union, it was not until some time late in November when the union attempted to read into the contract language a meaning which had not been intended at the time the contract was entered into, and tried to reclaim pay for time spent on grievances.

4. The provision pertaining to vacations was a specific departure from former practice. It was specifically provided for in the contract after negotiation, and has no relation to the provision under discussion.

5. Call-in time provision in the contract clearly provides for the payment to workers who report for work and who were not previously notified not to report, four hours of pay at their regular rate—that is, their basic hourly rate of pay, and not their average hourly rate of earnings.

The company stressed the point that the arbitration board is not empowered under the submission to give any meaning to the contract provisions other than the one which was clearly the understanding reached by the parties at the time of the negotiation. The company insisted that it never considered at the time this provision was agreed upon, that any more than the basic hourly rate of pay "expense" would be borne by the company.

Arbitration board's finding The findings of the arbitration board also merit quotation in full, in order for the reasoning of the board, and the weight attached by it to the various contentions of each side, fully to be understood.

The board has considered very carefully the contentions and claims made by the union and the company, and has read carefully the contract now in effect between them.

The board has also been privileged to scan the notes made by the union and by the company on the proposed clauses of the contract originally submitted during the negotiations. The board was also afforded an opportunity to examine payroll records of several of the employees, so as to be able to check the claim made by the company concerning its practice pertaining to the method of payment to the workers, for time spent on union business for the period commencing with the start of the union negotiations and ending with the date of the union's first formal complaint in regard to this matter.

After mature deliberation, the board is of the opinion that:

1. No definite understanding was reached between the union and the company in regard to what "company expense" would comprise: whether basic rate of pay, or earned rate.

2. Company practice, so called, of paying for "union time" was not conclusively proved by any of the records, because the payments made, with apparently one exception, for time spent during negotiations and after the signing of the contract, were to workers who worked on a straight-time basis. The one exception covered one worker who worked part of the time on piece rates. This occurred either immediately preceding or following the signing of the contract.

3. Contract provisions contain two different methods for payment for time not worked: one, for call-in time, for which basic hourly rate is paid; the other, vacation pay, for which average hourly earnings form the basis for payment.

4. This leaves the board in a dilemma in regard to the question as to what the parties intended should be the method to be followed in regard to the payment for time spent on union business.

5. In view of the contradictory attitudes taken by the union and the company, each side claiming what it had in mind as to the meaning of this provision, and neither side asserting that it had made its meaning clear to the other, the board is bound to conclude that there was no meeting of the minds between them in regard to the practice to be followed.

6. The board, not being empowered under the submission to write a clear contract provision, feels impelled to urge the union and the company to endeavor to reach an understanding at this time, in view of the fact that no clear understanding had been reached by them so far, in regard to the company's obligation to "pay the expenses."

It is quite true that the union had initiated the request for the payment for "required lost time . . . in settling differences . . .," but the contract provision pertaining thereto does not say whether the "lost time" is to be "basic hourly pay time" or "average hourly earnings of said workers" who are required to lose time to attend to union business. The board is of the opinion that *clarification* of the intent would amount to an *amplification* of the contract in this instance.

This the board is regretfully unauthorized to do. Its authority is limited to the declaration of the contract's intent. The evidence presented prompts the only possible conclusion, which is that the intent of the parties was not fully expressed, as apparently contrary opinions prevailed and were taken for granted by each side, without revealing the same to each other. Hence the matter must be settled directly by the parties themselves, unless they desire and authorize the board to make a ruling in their behalf.

STRAIGHT TIME ALLOWED WHEN HOLIDAYS NOT WORKED

The location of an apostrophe in a certain contract clause had a great deal to do with the arbitration board's decision in the following case.

If the word "employees'" had read "employee's" in the pertinent section of the contract, the board might not have decided in favor of the company, as it did. As it turned out, the wording of the contract so that it applied to the employees in general, and not to an individual employee, was what made it necessary for the board to rule that the company had not violated the contract, as the union claimed.

If the contract clause had not been carefully worded, and if the company representatives had not been sharp enough to bring out the distinction between "employees'" and "employee's," the outcome of the case might have been another story.

The contract clause mentioned above was one of several clauses called into account in a dispute that was submitted to arbitration by a tanning company and a union of leather workers (AFL).

The company had announced that Thanksgiving Day would not

be worked, and later in the year, that New Year's Day would not be worked. These were two of six holidays for which premium pay was due when they were worked, or if Saturday work was performed in a week during which one of these holidays fell, then pay for that Saturday was to be computed on a premium basis. In each instance, the company gave notice to the employees that they would be required to work on the Saturday following each of these holidays.

The union claimed that the company had arbitrarily closed down the plant on these two days, to avoid having to pay premium pay for the Saturdays that were worked, as was required by one of the provisions in the contract. The union demanded premium pay for the workers on the two Saturdays in question.

At first glance, the union's stand might seem a logical one. In the past, it said, all holidays except July 4 and Christmas Day had been worked. In 1946, the company had informed the workers that no work would be performed on Thanksgiving Day. It did likewise just before New Year's Day. Work was performed on the Saturday following each of these holidays, and only straight time was paid for those days.

The union admitted that the contract provided that if no work was performed on a holiday, such holidays were not to be included in computing the sixth day worked. But at the same time, it pointed out that another section of the contract called for compensation that the company had refused to pay. This clause was as follows: "The employer will not change an employee's working hours in an unreasonable or unnecessary manner in order to avoid overtime payments."

In ordering the workers not to work on the Thanksgiving holiday and on New Year's Day, the union asserted, the company had made a change in the working hours "in an unreasonable and unnecessary manner," and had deprived the workers of work on those days "in order to avoid overtime payments." The union had construed the clause as pertaining to *all* employees, rather than to "an employee." It therefore requested the board of arbitration to order the company to pay to the workers the premium pay due them, on the grounds that the "layoffs" imposed by the company on the two holidays were contrary to the intent of the contract clause governing work schedules.

The company stated that the union's contention was not sound, when all the contract provisions were considered, and particularly

when consideration was given to the one sentence of the contract clause which read:

If no work is performed on any of the holidays above set forth, such holidays shall not be included in computing the sixth day worked in the work week.

The company spokesmen were sure that it was management's prerogative to determine whether or not work at premium rates should be performed on holidays. They cited the article in the contract which gave management the right to direct the working force. Then they also claimed that the contract provision relating to hours clearly provided that premium pay was not due when holidays were not worked.

Pursuant to these claims, the company spokesmen pointed out that during the period of the Thanksgiving holiday and New Year's Day, only five days were scheduled as the standard work week. Previously a six-day work week was scheduled. But conditions made the shorter work week necessary. The saving of premium pay for the holiday was likewise necessary. The six-day week was again put into effect. The management spokesmen admitted that the change was made necessary in order to avoid premium pay for the holiday, because of increased labor costs and changed competitive conditions. But, they said, the fact that premium pay was also eliminated for the Saturday work, could not be construed as coming within the intent of the clause relating to premium pay.

It was also argued by the company that the clause relating to unreasonable and unnecessary changes in an employee's working hours, referred to by the union, did not refer to a shopwide change in working hours, but applied only to an arbitrary change of an individual employee's working hours when made unjustifiably for the purpose of avoiding overtime pay.

The board of arbitration could not find anything in the contract that modified the provision that if no work was scheduled, then a holiday was not to be counted as a day worked. To rule as to what the company's obligation was to be, as the union urged the board to do, would be to write a whole new contract clause. This the board was not empowered under the submission to do.

As for the union's claim that the company's action was arbitrary, and therefore violative of a section of the contract, the board was unable to agree with the union in its thinking for the following reasons:

A. The clause states "The employer will not change an employee's working hours. . ." If the parties intended to provide that no change in work schedules of the plant may be made "in order to avoid overtime payments," it would have so stated.

B. Reference is made to *overtime* and not to holiday premium pay. The primary change in schedule made by the company was to avoid payment of premium pay.

C. Nowhere in the contract is there any reference to any obligation by the company to continue to work on holidays, even though this practice was followed in the past.

D. The company's admission that more care to labor costs than was given in the past, had to be resorted to in order to meet the changed competitive conditions, and because of this situation, premium pay for holidays had to be avoided, leads to the conclusion that the company cannot be charged with being unreasonable or doing that which the board can properly determine as unnecessary.

E. The admission by the union spokesmen that the disputed issue had never come up before, and that neither side had brought it to the attention of the other prior to the signing of the current contract, or any of the preceding contracts, leads to the only possible conclusion, which is that their "minds had never met" concerning the question of what were to be the obligations of the company in regard to the work performed on the sixth working day of the week during which a holiday fell, which holiday had been worked on in the past but had not been scheduled as a work day on this particular week.

"Hence the board holds that as the contract is now written, the company cannot be considered as having unreasonably and unnecessarily changed the working schedule by not working on Thanksgiving Day in 1946 and New Year's Day in 1947.

NO CONTRACT CLAUSE SPECIFYING DAILY GUARANTEE

When writing up the terms of a contract it is never possible for either the union or the management to foresee all the disputes that may arise to cause them to wish they had not written certain clauses as they did. And practically never do both parties really desire to accept the wording of *all* the clauses that are finally written into a contract. Still they go ahead and sign on the dotted line, even though the contract may only partially please them, because they are anxious to see an end of the negotiations. They realize that giving in on some things is all a part of bargaining. All they can do is to concede the disputed matters and then hope that nothing will come up that will mean irretrievable loss to them because of their having given in on some point that meant much to them at the time of the negotiations.

An issue that a union had given in on during negotiations became a sore spot later on in the year. The union (the CIO textile

workers) sought to win back by arbitration that which it had lost through negotiation.

The company, a textile mill, undertook to convince, and did convince the arbitrator, that it was with good reason that it had not gone along with the union's request that guarantee for incentive workers be computed on a daily basis, instead of on a weekly basis. Therefore what was written into the contract stood, and could not be altered by the arbitrator.

Union's case "The twister doffers," the union grievance read, "who have been changed from day work to incentive, have not been guaranteed their old hourly rate in accordance with the provisions of Section 10, Sub-section 4, of the contract. The union requests that this guarantee be paid, plus additional earnings above the guarantee, on a daily basis, retroactive to the date of the change."

The contract clause referred to in the submission was what the union's grievance was based on. It was also what the company's defense was centered around. And the arbitrator's interpretation of it constituted the decision itself. It deserves to be read carefully:

When the method of pay is changed from hourly rate to piece rate or incentive rate, all employees who continue on (or are employed on) the job after the change, shall be guaranteed the previous hourly rate. This guarantee shall continue on direct jobs for six months, and on indirect jobs for 12 months after the date of the change or the date of the execution of this agreement, whichever is later.

The union admitted that a clear understanding had not been reached at the time the contract was negotiated as to whether the guarantee for this job included an obligation upon the company to pay on a daily basis, but it maintained that when these workers were placed on an incentive basis of pay, the guarantee provided for them was, by implication at least, to be computed on a daily, instead of a weekly basis. But the union did claim that there had been no dispute between the company and the union concerning this guarantee, at the time of the negotiations of the current contract.

The union then cited several other guarantees that had been written into the contract, among these being the clause guaranteeing that when piece rates were withdrawn temporarily, employees were guaranteed their straight time average hourly earnings *on a daily basis*. It also cited the guarantee that incentive employees

would receive a basic rate not less than the plant minimum wage, this guarantee to be computed *on a daily basis*.

The fact that the company had agreed to some guarantees on a daily basis, the union asserted, indicated that the company recognized the necessity for daily guarantees for the proper functioning of their incentive system. For this reason too, then, the guarantee for the twister doffers should be on a daily basis.

The union further pointed out that the guarantee paid by the company for the twister doffer job was so much less than the anticipated earning rate it had established, workers frequently had to contribute what excess they earned on good days, to make up for bad days when they didn't earn the guarantee.

The union finally claimed that while the contract did not clearly say so, it was the *intention* at the time of the change-over to guarantee the former earnings of the employees concerned, *to their advantage*, so that when running conditions were not up to the mark, they would not be adversely affected.

Company's position The company reminded the arbitrator that he was not empowered to write a contract provision, because of the following clause: The arbitrator shall have no power to render a decision, the effect of which is to change or modify any provision of the contract, or write into it any provision not agreed on by the parties.

The company stated that for two or three years it had been its practice to guarantee to workers on a weekly basis. The specific exceptions that it had agreed to were written into the contract.

The fact that two previous grievances entered by the union, requesting daily instead of weekly guarantees, had not been granted by the company, clearly indicated that the company and the union had not reached an agreement that all guarantees were to be on a daily basis.

What was more, the company pointed out, when the last contract was negotiated the union had made an attempt to provide for a daily guarantee for other workers besides the ones provided for in the contract. The company did not choose to go along with the union's proposal and the union did not press the matter any further.

The union was now attempting, the company spokesman said, to accomplish through grievance procedure that which it could not achieve through negotiation.

The company also pointed out that jobs other than that of

twister doffers, had been changed from an hourly rate of pay to an incentive method, and these workers were guaranteed their former rates on a weekly basis. No grievance was ever presented by the union in regard to these workers.

Were the arbitrator to rule that the guarantee to the twister doffers be guaranteed on a daily basis, these workers would receive special benefits, and there was every likelihood that the union would thereafter file grievances in all other cases where the weekly guarantee prevailed.

Then the company based its final argument on the wording of clause H, as quoted, relating to a change in method of pay. It stressed the fact that no mention was made of any guarantee on a daily basis, as was clearly stated in the other specific instances. The company added that since it would prove disadvantageous to it to have a daily basis guarantee put into effect, and since it did not agree so to do, the union's request should be denied.

Arbitrator's finding and award. The arbitrator saw clearly that he was not empowered to amplify the contract clause H which was the basis for this grievance. To do so, he stated, would go counter to the contract provision wherein his authority was clearly limited. Also, as he saw it, he was not deciding the merits or demerits of the question of daily versus weekly guarantees, but rather whether or not the contract was intended to have the guarantee in question computed on a daily or on a weekly basis.

The arbitrator could see that the parties themselves had not agreed on a method prior to the signing of the contract. The question was raised, but not determined. Hence there was no "meeting of the minds" between them. Under these circumstances, the arbitrator could not without specific authority from both sides determine the method to be followed.

The evidence was ample that a daily guarantee was specifically provided for in some instances, the arbitrator pointed out. In other instances a weekly method was used, and that method had been agreed upon by the union. Therefore the arbitrator ruled, any change in the method must be negotiated and agreed upon by the parties themselves.

EMPLOYEES CITED IN ARBITRATION WITHOUT THEIR CONSENT

Since the purpose of writing arbitration clauses into a contract is to promote the peaceful and harmonious settlement of labor

disputes, it is not surprising that occasionally arbitrators feel inclined to give advice to both sides. The advice often takes the form of specific suggestions as to how to avoid a controversy of the same type as that presented for determination.

A board of arbitration was called upon to settle a highly novel issue arising between the fishermen's union (AFL) and a seafood packing company.

Invoking the no-strike clause in the current contract, the company sought to collect from a group of nine individual employees, as well as from the union, monetary damages resulting from a work stoppage in which the nine participated and for which, according to the management, the union shared responsibility. While the merits of the dispute itself are of more than passing interest, the novel question was whether or not the employees named in the complaint could be bound by the terms of the arbitration award when they had not themselves consented to the holding of the arbitration proceedings. The board found that in the absence of authorization by the employees to have it decide the case and to make an award that would be binding on them, the board was without power to act, insofar as those individuals were concerned.

Then the board proceeded to indicate how in its opinion the management, the union and the individual workers could and should have acted in order to avoid a work stoppage and ensuing claims for damages. There was no dispute between the company and the union as to the fact that a work stoppage had occurred. Indeed, an official of the union candidly stated that it was a stoppage of work within the meaning of the contract, if nine men walked out, and "quit for a particular purpose and would not go back to work until that purpose was cleared up."

It was also not disputed that the nine men concerned in the controversy who comprised the crew of a fishing vessel, had refused to go out unless a fellow union member, Mr. P., was allowed to remain as a member of the crew. Mr. P. had been removed from the crew by the captain in the belief that he had entered the United States illegally. But according to the union, Mr. P. had supplied the captain with the necessary evidence of his legal entrance into this country, and the captain had refused to reverse himself after learning of this evidence.

On its own behalf, the union insisted that when its officials found that the crew was not to man the vessel unless Mr. P. was reinstated

as a member of the crew, they informed the captain that the union had no objection to the recruitment of a crew of nonunion sailors, and they were perfectly willing to have the vessel leave on its scheduled voyage. Accordingly, the union insisted since it had not authorized nor approved of the stoppage, there could be no liability on its part. Its spokesman further contended that both the captain and the company were lax in not endeavoring to obtain a new crew and in never contacting the union and requesting that the union use its efforts to provide a crew.

The company in turn argued that the action of the nine employees constituted a work stoppage for the purpose of coercing the management into taking some action which they or the union desired to force the company to take. Regardless of whether the action was desired primarily by the union officials or the employees themselves, the net result was a breach of the no-strike clause of the contract, and the union should be held responsible along with the individual employees.

The board of arbitration held, on this phase of the case, that there was no conclusive proof that the union had engineered, authorized, or directed the stoppage. Consequently, it rejected the company's claim for damages against the union. And, as was already stated, it ruled out the possibility of making any award of damages against the nine crew members.

Then the board went on to analyze the actions of all the participants in the dispute. It pointed out, among other things, that all concerned had acted arbitrarily and hastily without any real effort to obtain all the facts pertaining to the dispute, or to discuss the issues in an effort to reach an appropriate settlement without taking matters into their own hands. Here is what the board had to say in conclusion:

Both sides should recognize their mutual obligations to each other and through their actions and attitudes accelerate the development of mutual confidence and wholesome regard.

Each event that breeds suspicion of each other's motives serves as a deterrent to continued fair dealings and to permanent peace and harmony.

Company management policy if directed to help strengthen the union's arm, and to instill respect and regard for the union's representatives by the company's officers, would further the realization that the spirit as well as the letter of the contract is being observed and the conviction that the company is not seeking to weaken or destroy the union and the loyalty to it by its membership.

The union, likewise, if it resolved to prove through all its acts and through

its influence to consider the contract a sacred instrument by not tolerating any violations through any subterfuge whatever, would make a substantial contribution to the well being of the industry.

UNION RIGHTS IN RATE SETTING

The following specific questions were presented to the arbitrator by the textile workers' union (CIO) and a thread manufacturing company:

- A. Shall the company furnish the union copies of time studies taken on all interdraft jobs?
- B. Shall the union be permitted to make its own time studies on the present interdraft jobs at the company's mills?
- C. Are these requests by the union subject to determination by arbitration under the contract now in effect?

Both parties went to great pains to support their respective positions as to the arbitrability or the nonarbitrability of the first two questions. Patently, if the company could establish its position on the matter, it would automatically win its case, for there would be no point in going into the merits if the arbitrator ruled that the questions could not be arbitrated under the terms of the contract.

Union's position The union argued that the questions it had raised were properly subject to arbitration, since they related to changes in established work assignments which were neither routine nor technological in character. They pointed to a clause in the contract which they construed as requiring the company, when proposing changes in work assignments that were neither routine nor technological, "to furnish all information that was necessary to the complete understanding of the proposed change."

This controversy, the union explained, had arisen because of another dispute over work assignments that had gone to arbitration. The company had justified its position in the other case on the basis of the results shown by its time studies. But the company had refused to show the time study data to the union, and also rejected the union's request that it be permitted to make its own studies.

In substance, the union contended that any dispute involving changes in work loads, except those where under the contract the company had the exclusive right to make changes on a unilateral basis, were matters in connection with which the union had the absolute right to review time study data compiled by the management, and also to make an independent check by having time studies made by its own industrial engineers.

Company position Arguing the nonarbitrability of the issues, the company maintained that there were no contract clauses requiring it to furnish the union with copies of time studies, or requiring it to permit the union to make its own time studies. Furthermore, there was an express proviso in the contract to the effect that changes in its terms and provisions could not be subject to arbitration. The management concluded that were the arbitrator to find in favor of the union, he would in effect be introducing new material into the current contract.

Findings of arbitrator It was found necessary by the arbitrator to look at the contract in its entirety to ascertain whether or not there was a basis for accepting the questions as proper subjects for arbitration. He concluded that the contract authorized such matters to be taken to arbitration, because it contained a broad statement in its first section indicating that the purpose of the contract was to secure prompt and equitable disposition of grievances. He ruled that it was open to question and thus subject to arbitration, as to whether or not grievances could be equitably settled if the union were not entitled to have access to management time studies, or to make independent time studies of its own.

Thereupon, he proceeded to make specific rulings on the two basic questions raised by the union, holding that the company had to furnish copies of its time studies when requested by the union, if a grievance was filed as to the propriety of a rate. The arbitrator declared that to do otherwise would lead to the untenable conclusion that the union was expected to cooperate in the administration of the contract, but at the same time, to be "kept in the dark as to facts which prompted the desired changes." With respect to the union's demand to make its own time studies, the arbitrator ruled that the present contract clearly reserved to the company the exclusive right to do time study work within the plant. He then stated that nowhere in the existing contract was there any intimation that time studies could be prepared by anyone other than the management. He noted the union's contention to the effect that the right of access to the company's premises by the union's business agent should be construed as including the right to make time studies. He dismissed this contention as insubstantial, ruling that the right of access in this case, as well as in many others, was limited to conferring with employees and management in the settlement of grievances. Finally, he concluded that while he had the

right under the contract to decide the question, the contract did not empower him to require management to give access to the plant to union officials for the purpose of making time studies.

UNSETTLED GRIEVANCES UNDER PRIOR CONTRACT NOT ARBITRABLE

When is a dispute a grievance, and when is it a contract demand? This is not an academic problem. It arises over and over again in management-labor relations. And the solution is not one which can be reduced to a formula. The answer depends upon the facts of the case, the nature of the contract provision, and frequently upon the history of previous negotiations.

A case in point was one which involved the brick and clay workers' union (AFL) and a ceramic manufacturer. The parties joined in presenting for determination by the arbitrator five disputes relating to changes in wage rates, job assignments, and working conditions.

The company agreed to arbitrate, under protest. It insisted on a stipulation to the effect that its acquiescence in the arbitration proceedings was not to be construed as an admission that the management was willing to reopen the existing contract. Likewise the union declared that it had no desire to reopen the contract, but was of the firm conviction that the issues constituted grievances that had not been properly disposed of prior to the signing of the current contract, and therefore could and should be decided by the arbitrator under the terms of such contract.

Two of the points raised by the union were settled by what amounted to negotiation, during the course of the arbitration hearing. The other three were left for decision by the arbitrator. In the main, they related to alleged inequities in rates and conditions extant in two plants of the same company.

It was admitted by the union that its officials had attempted under the prior contract to get the same disputes settled by arbitration. The earlier contract provided for arbitration of disputes arising under the grievance procedure by a three-man board. It did not, however, set up any machinery for the selection of the third and impartial arbitrator, in the event the arbitrators representing the company and the union failed to agree. Such a failure took place, with the result that there was no way for the union to get a final settlement of its differences with the management. Under the new con-

tract the situation was corrected, and in the opinion of the union, it then became possible, as well as eminently desirable, to bring up the same issues for final and binding determination.

Of course the company had a different point of view. Its spokesmen regarded the issues presented by the union as being in the nature of new contract demands. Actually, so the management argued, the union had brought up the same points during the course of negotiations of the present contract, but the management had steadfastly refused to accede to their demands on these particular points.

The arbitrator ruled against the union. He declared that it was quite clear to him that the matters in dispute were clearly new demands which should have been disposed of by the union in negotiating the new contract. He held, therefore, that he was bound by the existing contract to hear and decide only grievances arising out of the terms of the contract, and that he was without authority to pass judgment upon demands for changes in the contract, and that was what the union was actually seeking to accomplish.

11. ARBITRATING NEW CONTRACT PROVISIONS

Rarely, if ever, is it desirable to have an entire new contract written by an arbitrator. Usually management and labor can agree between themselves on most of the major provisions of a new contract. It is preferable that they agree on all. Arbitration of new contract clauses should be used as a last resort, and only that.

There are, however, situations when both sides have good and sufficient reasons for standing pat on an issue that is of tremendous moment to them. What can they do about it? One obvious answer is to use their economic force. That means a strike or lockout, unless the other side backs down. There are certain fields of enterprise in which strikes are intolerable. Management realizes this, as well as union officials. Power companies, certain food distributing companies, as well as most transportation and communication companies are enterprises of this sort. They, too, properly prefer to utilize every conceivable resource of direct mediation or negotiation before arbitrating the terms of a new contract. Still, such companies, as well as many corporations engaged in purely private pursuits, have found it advantageous to arbitrate disputes over some unsettled contract questions. And the unions representing their employees have been equally desirous of using the same procedure.

If this were a treatise on collective bargaining, numerous suggestions might be given to employers and unions as to what techniques to use in narrowing down the issues to be arbitrated. Suffice it to say that when genuine deadlocks are reached on specific contract clauses, and no workable compromise can be found, then each issue to go to arbitration should be clearly and definitely identified. It is to the disadvantage of both sides, once having gone to arbitration, to have to haggle interminably among themselves as to what it is that has to be arbitrated. Perhaps the wage question remains

unsettled. Conceivably the management offered 10 cents, and the union was holding out for 20 cents. Agreeing to arbitrate, did the parties leave the question wide open for determination by the arbitrator? Or did they expect him not to go below the final offer of the management, or above the final demand of the union? Or was union security the sticking point in the negotiation of a new contract? Did the parties want the arbitrator to write his own ticket, giving due weight, of course, to the arguments of both sides? Or did they desire him to work out a set of contract clauses going at least as far as maintenance of membership, if that was what the management proposed, and certainly no farther than the union shop, if that was what the union was insisting on? These are matters which should be settled at the bargaining table, at the time when the decision is made to arbitrate.

Sometimes while a contract has many months to run, developments will occur which make it essential to reopen the contract for the negotiation of entirely new clauses. For instance, the current contract may provide for the reopening of wages in the event of a substantial increase in the cost of living. But the contract ordinarily does not go so far as to specify precisely what the change in wage rates shall be if the living cost goes up or down. Hence, if the parties are unable to agree as to an appropriate adjustment in rates, but are still bound by a no-stoppage clause in the contract, they will probably wish to have the wage dispute arbitrated. Or, perhaps curtailment in operations makes wholesale layoffs essential. The current seniority clause conceivably may not have been written in anticipation of such a contingency. Something has to be done quickly and precisely. In a situation of this kind, if they fail to agree among themselves, the parties may request arbitration on the question of an entirely different type of seniority setup to replace the existing provisions. Similar situations and subjects can best be illustrated by reviewing actual cases such as those cited below.

WAGE INCREASE CONDITIONED ON "NATIONAL PATTERN"

Since 1945 an ever-increasing amount of stress has been put on the so-called "national pattern," in negotiating wage adjustments. Small companies in a large industry have wanted to wait to find out what their biggest competitors would be willing to give in the way of wage increases. Large companies with multi-plant operations

that have made it necessary for them to compete for labor in many different areas, have not wished to confine their attention to developments in their own industries. Union officials have naturally wished to make the best possible deal for their members, irrespective of area settlements or industry patterns. In 1945, many corporations and union officials hoped and expected that the federal administration, through President Truman, would actually set the pattern. He refused to do so. Early in 1946, what amounted to almost a general national pattern was set with the 18- to 18½-cent increases in the steel, automobile, and electrical manufacturing industries. In 1947, it was the rubber industry that virtually established the pattern of an 11½-cent general increase, plus an additional 3½-cents-an-hour adjustment in fringe issues.

It is no wonder, then, that some of the most important unions and companies have sought to defer the completion of wage negotiations until the annual pattern has been set. That is what the negotiators for a very large food packing company and for the food workers' union (CIO) decided to do in the fall of 1945, when the national wage picture was still most unsettled.

In this instance, the union and the management agreed to arbitrate the amount of the wage adjustment. They entered into a temporary supplemental agreement, after having been unable to settle the wage issues through direct negotiation. Under the supplemental agreement, it was stipulated that further negotiations on the subject of a general wage increase would be postponed until negotiations then pending in the steel industry, the automobile industry, and the electrical manufacturing industry resulted in wage adjustments. When these developments had occurred, the stipulation declared, the union would have the right to reopen the wage questions for the purpose of negotiating a wage increase. But it was separately provided that under no circumstances should the amount of such increase exceed the prevailing increase granted in the industries just mentioned. The stipulation went on to say that if the unions representing the bulk of the employees in any one of the three other industries should reach an agreement within its industry which appeared to set a wage pattern, the management and the union would resume wage negotiations within ten days after that event had taken place.

In accordance with the stipulation, direct negotiations, which had been postponed in the fall of 1945, were resumed in March of

1946. Shortly thereafter, the parties disagreed between themselves as to the intent and effect of the temporary agreement which they had executed the previous fall. Hence it became necessary to submit for decision by an arbitration board the following questions:

1. Whether the agreement signed by the parties, dated November 30, 1945, providing for arbitration,
 - a. Limits the issue to be so decided, to the determination of the pattern of wage increases established in the steel, electrical and automobile industries, and requires the company to put into effect a wage increase in accordance with such pattern; or,
 - b. Whether the said agreement submits to the arbitrators the determination of the amount of the wage increase, if any, to be put into effect by the company.
2. In the event that the arbitrators decide the first issue in the manner stated in (b) above, what amount of wage increase shall be granted by the company.

Stripped of its technical verbiage, the foregoing submission presented to the arbitration board two simple questions:

1. Was the board bound to make an award in this case, on the basis of the pattern set in any one or all three of the other major industries; and
2. What was the amount of the increase fixed by the pattern adjustment in the other industries?

It was pointed out by the union that the adjustments in automobile, steel, and electrical industries ranged from a minimum of 17 cents to a maximum of 18½ cents. The union also produced evidence showing that the two major companies in the same area had given increases of 17½ cents and 18 cents respectively, and that the food packing company involved in the dispute had always followed the pattern established by these two corporations. One of them was in the steel industry, and the other was in the electrical industry. These two points, plus its insistence on what it regarded as the clear language of the contract limiting the board's discretion, were the net of the union's testimony.

The spokesmen for the management introduced a considerable volume of factual evidence, and did not rely solely on oral or written arguments in support of their interpretation of the earlier agreement that led to the arbitration proceedings.

First the management denied that the supplemental agreement of the previous year was intended to mean that it would automatic-

ally follow the wage increase set in the other industries. The management called to the board's attention the fact that the supplemental agreement definitely stated that the union would have a right to negotiate the wage question when the pattern had been set elsewhere. Nowhere in this document was there any statement that the company would do more than negotiate. Had the company been willing to go along with the pattern set in the other industries, so its spokesmen indicated, the obvious way to have framed the supplementary agreement would have been to say that the pattern established in the three specified industries would form the basis for its own wage adjustment.

Then the management went on to stress in great detail the adequacy of its current wage structure. It pointed out that the increases its employees had received since January 1, 1941, had approximated 37 per cent, while the cost of living had gone up only 33 per cent. It was also pointed out that the take-home pay of the employees had increased nearly 65 per cent over the January, 1941 level. Then, the company went on to explain, even without any further wage adjustment, its employees were currently receiving higher hourly rates than those paid by any other firm in its area for comparable jobs.

Findings of board On the main point presented to it for determination, the board rejected the union's contention. It ruled that the language of the supplemental agreement showed there had been no stipulation between the parties that the wage pattern set in the three other industries was automatically to be followed by the company. As to the amount of the general increase, the board took into account the factual evidence presented by both sides, and having held it was free to fix the general increase in any amount at its own discretion, the board concluded that a 15 per cent wage adjustment across the board was the proper amount. In making an award to that effect, the board expressed the opinion that it had not only followed the pattern of the area in which the company's operations were located, but had also adhered closely to the pattern for the food packing industry.

PATTERN WAGE INCREASE BUT WITH FEWER HOLIDAYS

Increases in labor costs and in take-home pay do not come exclusively from general wage adjustments. For instance, when demands for a general increase are accompanied by demands for paid holi-

days, night shift premiums, etc., all of the demands must be considered in combination. Six paid holidays, for example, may be the equivalent to a wage increase of two to four cents an hour. Accordingly, it is not unusual when management and labor fail to reach an agreement on one wage issue for them to submit to arbitration, simultaneously, all of the unsettled wage issues.

The mine, mill and smelter workers' union (CIO) and the management of a roofing concern submitted to arbitration disputes arising in the course of new contract negotiations regarding both the amount of the general wage increase, and the question of holiday pay as well. In December, 1945, the company and the union had agreed on a 10 per cent wage increase on a provisional basis. There was a stipulation that if and when the company obtained price relief from the OPA, then the wage clauses of the contract could be reopened. The union did this very thing, as soon as the OPA authorized a moderate advance in the ceiling price of the company's products.

An additional $8\frac{1}{2}$ -cent increase was sought by the union, to bring the total amount of the adjustment to $18\frac{1}{2}$ cents, in conformity with what it insisted had become the area pattern after VJ Day. The union cited, in support of its demands, the action of most of the large companies in its own industrial area, which had granted a total of $18\frac{1}{2}$ cents in wage adjustments.

At the same time, the union made demands for the payment of six holidays when not worked, and for double time for work performed on these holidays. It insisted that the roofing company was the only concern in the area with which this particular union had contracts that did not have these provisions for holiday pay.

The main objections of the management to granting an additional wage increase involved its competitive position. The company maintained that its present labor costs were higher than those of its competitors, that the price relief of 5 per cent, which had been authorized by OPA, was insufficient to warrant any further additions to its labor costs, and that the costs of the materials which it used had gone up some 30 per cent. These added costs, the company maintained, more than offset the slight advantage it had been given by OPA price relief.

On the question of paid holidays, the company presented a report compiled by the local chamber of commerce, demonstrating

that the great bulk of the employees of the larger plants of the area received no paid holidays.

Arbitrator's decision In making his award, the arbitrator went to considerable length in explaining the reasons for his findings. His opinion and decision are quoted below in full:

The arbitrator has considered carefully the claims by the union and the position taken by the company and has analyzed the differences between them along the following lines:

1. The union's contention that the workers employed by this company should be considered mainly on the basis of the area in which they work and live for the purposes of comparing their living cost burdens and increases granted to them in comparison with the living cost burdens and increases granted to other workers engaged or employed by other companies in the same area.

2. The company's point of view that the chief consideration should be given to the rates paid and increases received by the workers in the same industry employed by other firms in the adjacent area or in the region.

Sufficient information was not presented by either side in regard to the increases granted for the employees of other roofing firms or to the actual average hourly earnings of employees of other roofing companies.

It is the arbitrator's well considered opinion that the most important problem for the workers of this company to face is the cost-of-living problem, and that the increases received by them since VJ Day have fallen far short of the increased cost of living to which they and others have been subjected.

The arbitrator is therefore of the opinion that the union's demand that they be given the \$.085 increase so as to make their total increase since VJ Day \$.185, is not an unreasonable one, and one that will impose no unduly heavy burden on the company.

The company submitted that it has been subjected to a substantial increase in the cost of its raw materials, so much so that a substantial portion of the price relief allowance granted by the OPA has been absorbed by these increases.

Arbitrator is impelled to conclude that the workers employed by this company should be treated with the same consideration, if not more so, as the suppliers of this company, who have asked for and received increases which, according to the company's own statement, average approximately 33 per cent.

Arbitrator is further mindful of the fact that the company has been heretofore greatly handicapped in securing enough perfect raw materials to operate to capacity. This, the arbitrator was informed, is being remedied speedily, which will result in there being a more even flow of production, an elimination of payment to the workers for a so-called "down time" and an increase in output, which will further reduce the overhead cost. All these factors should put the company in a much better position to absorb the slightly added labor cost resulting from the increase awarded by the arbitrator.

Concerning the payment for holidays not worked, the arbitrator finds that while some firms do pay for some holidays, this practice has apparently not been universally accepted in the industry, nor in the area, although several firms in contractual relations with this union are paying for holidays as

requested by the union. The arbitrator believes that at this time the company should be required to pay only for the following holidays when not worked:

New Year's Day
Fourth of July
Christmas

All holidays when worked should be paid for at the rate of double time.

INABILITY TO PAY NOT PROVED

The wage dispute affecting the employees of an urban transit company, which was submitted to a board of arbitration, well illustrates the types of factual evidence, as well as arguments, that are likely to be encountered in any controversy over the amount of wage adjustment in a new contract. The employees involved in this particular case were represented by the street railway and motor coach employees' union (AFL).

The dispute arose when the union sought to have a 30 per cent general wage increase embodied in its 1946 contract.

Union's contention The main points presented by the union at the arbitration hearing may be summarized as follows:

1. The town where the transit company maintained its operations was in a very high wage area. Almost 80 per cent of the industrial employees in the town worked for steel companies, and enjoyed rates that were among the highest in the county. The town was likewise in an area where costs of living were extraordinarily high.

2. The employees of the transit firm were among the lowest-paid transit workers in the whole country. Only 12.7 per cent of all transit drivers in the nation received less pay than did the drivers for this company.

3. The current rates of the employees were below those generally paid for unskilled labor in the same town. The skill required in operating buses, as well as doing maintenance work, certainly entitled the employees to receive rates much more than the rates paid to common laborers in other concerns.

4. The current rates compared unfavorably with the wages paid to "over-the-road" buses entering the town. The duties of these local bus operators involved greater responsibility and more onerous conditions, particularly because of heavy city traffic. And yet, the drivers for the other companies were receiving from 25 cents to 90 cents more per hour than the drivers of this transit concern.

5. Employees in other establishments in the town had recently

received wage increases ranging from 18½ cents an hour up to 20 and 30 cents an hour.

6. The employees of this transit concern had had no wage increase whatever since 1943, despite the tremendous advance in cost of living.

7. There was no substantial merit to the company's assertion that the employees enjoyed unusually favorable working conditions, considerable amounts of overtime pay, and so forth. The same conditions and perquisites were prevalent throughout the whole transit industry, nationally.

8. Similarly, there was no merit to the company's claim of inability to pay. During the few years that the company had been in operation, it had paid out some 60 per cent of the original investment in dividends. The company had no outstanding long-term debts, no fixed interest bonds, and its gross income was more than five times the actual value of the investment of the stockholders.

Company's position

1. The rates currently paid were quite in line with those paid by other transit companies in towns of comparable size within the same state. Any intercity inequities that might then exist would be corrected by an increase of 10 cents an hour, which the company was willing to grant.

2. Take-home pay for the employees, including the value of hospitalization and insurance, and other special payments, produced total monthly earnings that compared very favorably with those of employees in other industries in the area.

3. The union was incorrect in its insistence that the work of the urban drivers was more difficult than that of the interurban drivers employed by other companies. The latter companies had much more stringent requirements, and their drivers had to have much higher skill and exercise a much greater degree of care.

4. No increase greater than 10 cents an hour should be awarded. Even an increase of 10 cents would cost the company a sum equivalent to 25 per cent more than its net earnings during the preceding year.

5. If an unbearable wage burden should be placed on the company, it would be obliged to reduce service, and make other economies that would ultimately lessen the total volume of employment, and thus react to the detriment of all of the employees.

Findings of arbitration board The board's findings likewise merit review point by point. Here is what the board concluded:

1. The employees of this transit company were entitled to a wage consideration on the basis of going rates in the area. Most industrial workers were then receiving hourly rates greatly in excess of the rates paid by the company.

2. The cost of living in the town was among the highest in the country, and the wages of the transit employees should more closely compare with the highest rates then paid in the transit industry.

3. The rise in cost of living since the time of the last increase granted to the employees, namely in June, 1943, was much too great to require any elaboration.

4. The company's claim of inability to pay could not be accepted as a valid reason for refusal to grant a justifiable increase to these employees. The company admittedly had paid reasonable dividends to its stockholders, and had not stinted in its remuneration to its top management. The future outlook for the company was bright.

Then the arbitration board went on to declare:

To deny fair wages to the employees on the ground that the stockholders must first secure in dividends the withdrawal of their original investment before the franchise expires, on the theory that the property of the company will at the time be practically worthless, seems to the board of arbitration to be unsound as a reason for such denial.

In the light of these facts, the board awarded an immediate increase of $17\frac{1}{2}$ cents an hour.

COST OF LIVING ADJUSTMENT

History is said to repeat itself. In 1948, cost of living seems to be one of the predominant issues involved in current controversies over wage rate adjustments. But cost of living was just as important an issue in 1919, in 1929, and 1939, and in the first few years of World War II. It is to be anticipated that situations prevailing in these prior periods will provide many a parallel for incidents arising in the future.

To cite a specific instance, a dispute arose in 1942 between a shoe manufacturing company and its employees, who were represented by the shoe workers' union (CIO), as to whether or not a wage adjustment was warranted because of the continued rise in cost of living. The parties to the contract had anticipated the possibility of further advances in cost of living, and in their current contract had written the following clause:

The union may request the company to meet with it on or about May 1st, 1942, to discuss whether there has been a substantial increase in the cost of living. If any change in wages is agreed to thereafter, it will take effect from the date of agreement as to the change. If the parties are unable to agree on any change in wages, the controversy shall be referred for arbitration to the Conciliation Service of the United States Department of Labor, its decision to be final and binding upon the parties and to take effect as of May 15th, 1942.

Pursuant to this contract provision, the management and the union, after reaching an impasse in direct negotiations, submitted the dispute to arbitration.

The union sought an increase of 10 per cent across the board. It argued that there had been at least a 10 per cent rise in cost of living since the current contract was put into effect. That was the union's whole case.

The company's position was slightly more complex. It argued that increased earnings in the form of take-home pay had more than offset the advance in cost of living. The management further argued that under its incentive-pay system, the employees had abundant opportunity to produce a much greater volume, and consequently could increase their earnings very substantially if they so desired. The management declared, "It is a well-known fact that on many of the operations the employees have set quotas of production which are not the equivalent of a full day's work."

The management argued that while it had been able in the past to overcome some of the handicaps of its high labor costs by making improvements in operating efficiency and obtaining a larger volume of output, the price ceilings and other governmental restrictions then in effect had offset its competitive advantages. Hence it claimed that no wage adjustment was warranted.

Arbitrator's findings In reaching his decision, the arbitrator took into account all of the factual evidence and arguments presented by both parties, and also made an independent investigation of the situation currently prevailing in the shoe industry. He reached the following conclusions:

1. The wage rates and earnings of employees in the shoe industry were generally quite low, and there was ample justification for a gradual rise in rates and in earnings.
2. The firms that had had a continuous production schedule had provided work and earnings to their employees far in excess of the earnings of employees of firms operating on a seasonal basis. Thus

there were great discrepancies in the total yearly earnings of employees employed by different shoe manufacturers. Any general rate increase would further affect adversely the firm's operating on a seasonal basis.

3. While the shoe manufacturing company involved in this dispute produced exclusively for an affiliated company, it had nevertheless to be able to produce shoes at a price comparable to those competing firms from whom the affiliated company could obtain the same or similar merchandise. Otherwise, this concern would not be in a position to secure a steady supply of orders, and the present continuous production schedule would be curtailed, with a consequent reduction in the employees' earnings.

4. The rates paid by this particular company were as high as, if not higher than, the rates paid by other manufacturers of the same grade of shoes.

5. Nevertheless, the employees' earnings in the current year had not entirely kept pace with the increased cost of living, and, therefore, an increase of 5 per cent in their base rates was warranted at this time.

The arbitrator consequently made an award of a 5 per cent general increase.

THE UNION SHOP UNDER TAFT-HARTLEY

In some quarters it has been said that arbitrators have more authority than justices of the United States Supreme Court. That is not true. Any federal judge deciding any question of law may hold that the statute is unconstitutional and refuse to hear the case on its merits. Not so with arbitrators. They have to mould their decisions in accordance with laws currently on the books. They cannot attempt to add to, subtract from, or ignore any applicable statute. Thus, whether or not they approve of or disapprove of the Taft-Hartley Act, is immaterial. As long as that law remains on the books, and is neither modified nor nullified by judicial interpretations, no arbitrator can issue any decision which does not take fully into account the requirements of the law.

Now the Taft-Hartley Act drastically limits conditions under which a union shop can be made effective. Within a few weeks after this law was passed, this arbitrator was called upon to decide a case involving the demand of a labor organization for a union shop. The union making the demand was the electrical workers' union (CIO),

It was doing so in behalf of the workers of a sizable metal working company.

The fact that in this particular case there were many issues other than the issue of the union ship has no bearing on the main point. Often either side will toss a number of questions into the arbitration ring, when it appears certain that a complete accord cannot be reached in the negotiation of a new contract. Thus both the question of union security and the checkoff were included in the issues to be arbitrated in this particular case.

It happened that in the course of the arbitration proceedings, representatives of the management and the union got together on the union security questions. In other words, they reached a tentative agreement. Nevertheless, both parties specifically requested that the arbitrator embody in his decision and award, the matters provisionally worked out by the parties themselves.

The union security clause, which the arbitrator was called on to include in his decision, met all of the novel requirements of the Taft-Hartley Act. It read as follows:

Union shop New employees shall, if found satisfactory by the employer, become members of the local union after they shall have completed 40 days of actual work with the employer. The local union agrees that it will not discriminate in any way (either through excessive initiation fees, fines or otherwise) in admitting to membership in its union, any persons now or hereafter employed by the employer, and that present employees will be admitted to membership in the union upon the same terms and conditions as other union members or employees who are admitted to the union, except those who had been previously expelled from the union. It shall also be a condition of employment that all employees who are now employed and new employees after their trial period shall remain members of the union in good standing during the term of this contract. An employee shall be considered in good standing with the union if he or she has not been expelled or suspended from the local union in accordance with the constitution and by-laws for the time being of the local union, excepting, however, expulsion or suspension for non-payment of fines or assessments in any form.

The checkoff clause, similarly, was so framed as to comply completely with the Taft-Hartley Act. The specific language embodied in the arbitrator's award is quoted below.

Check-off The employer will by March 1, 1948, deduct from the third payroll of each month and remit to the union, union dues in the monthly amount authorized in writing as hereinafter set forth, but not exceeding \$2.00 per month, together with an initiation fee, if any, not exceeding \$2.00, of such members of the union who, on or after the date of this contract, indi-

vidually and voluntarily in writing, deliver to the employer authorization for such deduction, according to the following form:

I hereby authorize the company to deduct my union dues amounting to One Dollar and Fifty Cents (\$1.50) per month, and my union initiation fee of Two Dollars (\$2.00). This to be deducted monthly.

NOVEL COMBINATION OF UNION SECURITY PROVISIONS

In the light of the uncertainty of the continuation of the Taft-Hartley Act in its present form, all concerned in matters of union security should have a decided interest in the several variants of the union shop and other security provisions that have been embodied in past arbitration cases.

An unusual set of circumstances resulted in a novel decision in the case of two glass manufacturing companies and the glass workers' union, CIO. The management of both companies joined with the union in submitting to arbitration, under the heading of "cooperation," the following issue:

The board may define for uniform application at all plants the subjects of cooperation and the procedure therefor based on evidence of past practices followed to any significant extent, and consistent with the basic objectives of the cooperation clause; the subjects of cooperation to include in any event original union membership and regular dues, and may include such others or none of the following as the board may determine under the foregoing, viz:

Fines

Reinstatement fees

Assessments

Probationary employees

Extenuating or unusual circumstances or exceptions with respect to any of the foregoing subjects.

This dispute was heard by a board of arbitration. While there was an elaborate set of hearings, which included oral testimony and argument, and the recording of the full transcript of the proceedings, the case was finally decided by a compromise solution worked out by both parties in informal conferences after the conclusion of the hearings. Hence the arbitration board confined its findings and award to the conclusions reached through such conferences. In other words, instead of summarizing the arguments pro and con for each side, the board felt that the board's conclusions and award spoke for themselves.

The union security provisions ultimately worked out between the management and the union and set forth in the board's award, read as follows:

Cooperation concerning union membership will be uniform in all plants, and the practice will be as follows:

During the first thirty days of employment the union will undertake to secure the voluntary membership of the employee. After thirty days of employment, the union may notify the plant management in writing of any employee who has not become a member. The company will immediately undertake to secure the voluntary membership of such employee, and will terminate the employment of any employee who within thirty days after the notice has not paid an initiation fee of \$2.00 and regular dues of 1 per cent of his gross earnings from the date of his employment.

With respect to members of the union who voluntarily and individually authorize in writing the deduction of the items mentioned hereinafter in this section, the company agrees to deduct, for the period of this contract, such items from the wages of each employee giving such authorization, funds so deducted shall be transmitted to the local financial secretary by check, payable to the order of the local union, not later than ten days after each payroll period. The card for such authorization will be as Exhibit "A" attached to this award.

With respect to employees who have not voluntarily authorized the company to make such deduction, whenever any such employee fails to pay dues of 1 per cent of his gross earnings, excluding vacation pay, or owes the union a reinstatement fee not exceeding \$2.00 for three months' default in regular dues, or \$10.00 for four months' or more default in regular dues, or a non-attendance fee not exceeding \$1.00 for failure to attend at least one regular union meeting every three months, the union will notify the plant management in writing, specifying these items of indebtedness. The company will immediately undertake to induce the employees to pay voluntarily such indebtedness to the union, and if, at the expiration of thirty days after this written notice, such indebtedness has not been paid, the company will terminate the employment of such employee.

In a case where either party asserts in writing before the end of its 30-day period that a departure from this practice is justified by unusual circumstances, such circumstances shall be considered and a proper decision made through the grievance procedure, and if necessary by the final step of arbitration, but this provision shall not detract from the ultimate objective of 100 per cent dues-paying membership.

UNION SHOP AWARD AFTER ELECTION

As everyone knows, the Taft-Hartley Act contains a provision prohibiting union shop contracts from being entered into unless the employees in the bargaining union have expressed themselves by a majority vote in a secret ballot election in favor of the union shop. Thus the statute now requires what had occasionally been done at the direction of an arbitrator or by specific consent by both parties, long before the Taft-Hartley Act went into effect.

As long ago as the spring of 1942, there was an arbitration case

involving the closed and union shop issues, which actually was decided by a vote of the employees concerned. The brick and clay workers' union (AFL) was involved in a dispute with a fire brick manufacturing company over union security questions. The union had demanded a closed shop and the management sought to avoid any union security clauses.

The union justified its demand on the grounds that a union shop would eliminate rival organizing activities on the part of another union that had sought recognition, and it would tend to establish amity and solidarity among the working forces and between them and the management. It would make for better shop discipline, too. According to the union spokesmen, there had been a great deal of mistrust in the past between the employees and the company, and in order to wipe the slate clean and to promote friendly relationships, a closed shop clause was absolutely imperative.

On the company's side, its spokesmen pointed out that the results of the election conducted by the National Labor Relations Board showed a very small majority voting in favor of the union. Hence the large minority which voted against the union should not be compelled to join the union or suffer the loss of their jobs. Then the management advanced the traditional argument that it was the function of the union to bring employees into its membership and the company should not be compelled to do what the union could not do on its own efforts.

During the course of the arbitration proceedings, the parties unanimously requested that the arbitrator conduct a secret ballot election at each of the three plants of the company concerned in this dispute. The purpose of the election would be to ascertain whether or not there was actually a preponderant desire among the workers in each of the plants for the inclusion in the contract of a closed shop clause. The arbitrator was empowered to keep the results of the election to himself, not divulging the results to either side. He was authorized to use the results of these elections as a basis for determining whether or not it would accrue to the best interest of both of these parties to embody a closed shop clause in the contract.

Arbitrator's findings In accordance with the request of both sides, the arbitrator conducted a secret ballot election at all three plants. He found that practically all the workers had voted in these elections and that the results showed overwhelming majorities in favor of the closed shop. The arbitrator accordingly ruled that the

following provisions, which amounted to a union shop and check-off, rather than a closed shop, be embodied in the current contract.

The company further agrees to employ only members of the union, or those willing to become members after a reasonable length of time, not to exceed 30 days, following their employment in and around the plant. The initiation fees to be checked off in two equal semimonthly payments. The monthly dues shall be checked off once a month, as per statement to be filed in the office of the company by the financial secretary of the union, who shall receive, as the union representative, the amount checked off on the first day of each month.

CONCLUSIVE REASONS FOR UNION SHOP AWARD

A case notable for the clarity and preciseness demonstrated by the representatives of both sides, is here summarized. An electrical equipment company and the electrical workers' union (CIO) took to arbitration a dispute as to the type of union security clause, if any, to be embodied in a new contract.

The main contentions of the union were the following:

1. The principals of the company were the same as those who owned and controlled another company in the same industry, and this second company had entered into a union shop contract with the U.A.W. (CIO). Hence the employees of this particular company felt that its management was discriminating against them by declining to grant them a union shop, which had been voluntarily granted to the other union.

2. All but two of the present eligible employees of the company were members of the union and it was only fair that the vast majority should be provided the security the union was seeking, as against the negligible number who would get all of the union benefits, but who had refused to share in the support of the union.

3. The majority of the competitive firms in the same industry then had union shop privileges in their current contracts with the same union.

4. The management evidently had not been opposed to the union shop on principle, and hence there seemed to be no sound reason for withholding this clause from the contract.

5. The employees would feel more secure as to the protection of their seniority rights and their jobs, under a union shop.

The management's principal contentions were:

1. This company was a separate and distinct corporation, and was not directly or indirectly allied with the other companies mentioned by the union.

2. The management had had as yet no experience with this union, and desired at least a year's trial before being bound by a union shop contract.

3. The company did not feel called upon to compel any individual worker to join the union against his will, or lose his job as a result.

4. There had been a recent decision by the National War Labor Board in the case of a competitor, in which the Board had refused to order a union ship in a situation closely comparable to the conditions prevailing in this particular case.

The arbitrator felt that the union had proved its case, and accordingly awarded a union shop clause. In so doing, he declared:

The union is an experienced body with a fine record for responsibility and will undoubtedly be better able to prove its ability to perform under the contract with a complete union shop than it would while there are in the shop a very small number of unaffiliates, who would most likely cause irritations and disturbances difficult to control.

The "first contract" is not in itself sufficient cause to postpone the term of starting and promoting the fullest cooperation between management and the union and all the workers, so that proper shop discipline, full shop efficiency and complete mutuality of interests may function without any delay whatever.

Security for the continuance of collective bargaining is bound to release forces used for the purpose of protecting that security into a channel of more harmonious relationship between the company and the union and redound to their common good.

MAINTENANCE OF MEMBERSHIP ORDERED

During and shortly prior to the days of War Labor Board control of disputes in most types of establishments, many unions felt it inexpedient to seek anything stronger in the way of union security than a standard maintenance of membership clause. There was, however, much resistance on the part of many employers to even this diluted type of union security.

A federal union affiliated with the AFL sought to obtain the standard maintenance of membership provisions from a rubber manufacturing company. The management of this company had two grounds for resisting the union's demands, but readily agreed to have the issue decided through arbitration.

It appeared that in the course of the initial negotiations, the company had offered to post a notice to the effect that it would be the policy of the management to encourage its production employees to support the union. This notice, the management argued, was

intended to dispose of, and actually had disposed of, the union's original request for a union shop for a period of a year. The company's agreement to post the notice was disclosed to the union's business agent in the presence of the members of the negotiating committee, and was not objected to at the time, either by him or by them. Hence, the management insisted, an agreement had been reached to dispose of the question, and the union had no warrant subsequently to demand a maintenance of membership clause.

The management went on in the course of the arbitration hearing to oppose maintenance of membership on the grounds that the union and its membership needed more experience. Thus it was proper that the union should first demonstrate its responsibility, before acquiring complete jurisdiction and control over the job rights of any and all employees who chose to sign up with it.

The union categorically denied that its business agent or its negotiating committee had accepted as final and binding the company's proposal to post notices expressing its willingness to encourage union membership. It then proceeded to present the usual arguments in favor of union membership, if not a stronger union security clause.

On the basis of all the facts, the arbitration board which heard the case concluded that both sides had acted in good faith, but that there had been no conclusive agreement as to the disposal of the union security matter for a period of a year. Finding that it was free to decide the case on its merits, the board proceeded to order a standard maintenance of membership clause.

The arbitration board had this to say in justification of its conclusion:

It is quite obvious from the wording of this clause that the company's own position, according to its notice encouraging union support, as well as its desire to protect such of its old employees, who have not joined the union heretofore, are harmonized by this provision. The union too is provided with the type of security it deems necessary to carry on and cooperate with the company to the fullest extent.

SENIORITY FOR SUPERVISORS

Directly and closely related to the subject of union security in general is the question of the status of union members who are transferred to jobs outside of the coverage of the bargaining unit. Should employees promoted to supervisory positions retain union status and seniority rights? Should they continue to accumulate

seniority during their incumbency on a supervisory job? These two questions were submitted to arbitration by the glass workers' union (CIO) and two large glass manufacturing companies. The questions were to be decided along with the question of union security in general, by a board of arbitration. The union security issue, as decided by the board, was summarized earlier in this same chapter.

As has already been indicated, the board of arbitration, in deciding all of the questions in dispute, did not attempt to summarize the positions of the respective parties. In effect, the board, which included in its membership distinguished representatives of the management and the union, negotiated a settlement. The settlement of this particular set of issues provided that the current contract should contain the following provision:

Hourly rated supervisors shall further accumulate seniority while holding supervisory positions, provided they pay union dues. Salaried supervisors shall further accumulate seniority for one year from the date of their promotion while holding supervisory positions and they shall not be required to pay union dues as a condition, but may pay dues if they so choose.

The board made the following order:

The contract shall also contain a provision that seniority rights of hourly paid supervisors accrued prior to a date ten days after this award, shall be retained for the future. The purpose is to prevent break of seniority through lack of knowledge of this new condition. As to salaried supervisors, no action on their part being needed, the new provision can be effective from the date of the award. Their seniority rights accrued to that date under former practice will be retained. The new provisions are not intended to take away any seniority rights accrued to date.

For the benefit of both management and union representatives who may be confronted with the same sort of controversial issue, it might be well to point out the usual arguments advanced by both sides.

From the union's standpoint, seniority privileges are actually a cherished right. Employees join a union and pay dues in order to attain this right. If they accept a position outside of the bargaining unit, they are and should be on their own. Probably they will get higher pay. Probably they will be eligible to special benefit plans or bonuses made available only to the management group. They take management jobs at their own volition and at their own risk. Why should they, after leaving the union, have automatic protection of their seniority rights under their previous positions? If they have

such protection, they might serve for four or five years or more in a management capacity, and then, losing their jobs, be entitled to go back into rank-and-file positions and bump off loyal union members who have paid dues throughout the same period for the purpose of protecting their own seniority rights. Thus it is only fair, so the unions contend, that if anyone is to preserve his right to go back into a job covered by the union contract, he should at least pay his way by continuing to keep up his union dues and any assessments that may be levied on rank-and-file employees.

Management usually advances an entirely different type of argument. "We believe in promotion from within," say most company spokesmen. "We do not want to discriminate against union members. Everyone should have a chance to get a better job on the basis of merit and individual ability. Still, when we promote someone to a foremanship or other supervisory position, we expect him to be wholeheartedly and completely on the side of management. He can't do this and remain a member of the union. While acting as a management representative, he should not be required to pay dues or assessments to the union. If our supervisory force is required to keep up union membership or to incur financial obligations to the union, they will have a divided loyalty and uncertain status. So, we desire and hope to promote efficient union workers to management positions. How can we expect them to take such positions if the union insists that their only chance of going back into the membership, if curtailment of operations necessitates their demotion, is for them fully to keep up their union allegiance while serving in management capacities."

DEPARTMENTAL VERSUS PLANTWIDE SENIORITY

It has already been pointed out that occasionally a deadlock will be reached over a matter that seems to both parties to be one of fundamental principle. Neither side wants a strike or lockout to occur as a result of a disagreement. And yet both the management and the union do not wish to recede from their respective positions when they think the issue is of great consequence. In such a situation, they are forced to the realization that either or both sides may be wrong, and the only way to get a solution of their problem is to have it decided by some impartial person. That is precisely what the brass workers' union (CIO) and the management of a watchmaking company decided to do when they reached an impasse over the question of plantwide versus departmental seniority.

The union had unsuccessfully sought to include in the impending contract a clause defining seniority as the total length of service in the plant. The main purpose of such a seniority clause, the union asserted, was in the event of layoffs to protect the jobs for the workers with the greatest plantwide seniority. The union was willing to concede that these rights should be exercised only provided that the individual employees were competent to fill the jobs of probationary workers, or to fill recently created jobs.

In urging the necessity of limiting seniority to a departmental basis, the company first pointed out that departmental seniority had been observed in the past and had operated satisfactorily from every standpoint. The nature of the company's business, its spokesmen declared, required the maintenance of many separate and distinctive departments. The work performed in each was not interchangeable with that of any other. Even within some departments, the jobs were not properly interchangeable.

The management cited as an example its toolroom department. The machinists employed in that department were unable to perform the work of tool and die makers. In the maintenance department, which employed electricians, carpenters, painters, plumbers, and so forth, each job had been performed by a man with special training and experience. Were plantwide seniority to be put into effect, the company spokesmen argued, a terrific problem of placement and training would result. Then its spokesmen went in to cite the area practice, pointing out that ten out of fourteen representative plants had departmental seniority provisions in their contracts, and only four had plantwide seniority. As an attempted "clincher," the management brought out the fact that out of 120 representative plants which had bargaining relationships with the brass workers' union, approximately 75 per cent had departmental or occupational seniority, while only 25 per cent were operating on a plantwide seniority basis.

Arbitrator's decision The arbitrator indicated that he was particularly impressed on the one hand by the company's claim that the work as it was being performed in each of the departments was not interchangeable, unless the workers who had had experience on certain operations were obliged to go through a long training period on the new jobs to which they might be assigned. In the interim, production would be decreased, and both the company and the workers involved in the operations in the departments to which the

transferred workers were brought in would be adversely affected. The arbitrator, on the other hand, indicated that he was also impressed with the union's position, since they had asserted they did not intend to have any experienced workers "bumped off" their jobs when employees with greater seniority had been laid off because of the shutting down of one department, or because of the decrease in work in others.

Giving full weight to both opposing conditions, the arbitrator concluded that the following contract provision would best serve the interests of both parties in this particular situation:

Seniority of service shall protect the employees of the company in all cases of layoffs and rehiring, provided such employees are fully competent, having demonstrated their ability in the plant, to fill available jobs at the time of layoff. When jobs become available, workers who were laid off shall be rehired in accordance with their seniority, provided they are fully competent to fill such available jobs, having demonstrated their ability in the plant.

Because of the nature of the operations of the company, work being performed in departments wherein employees with special skill and experience perform the necessary work, such employees must of necessity be subject to seniority within the department wherein they are employed.

All workers within the plant who perform work of like or very similar character, are to maintain plant-wide seniority. In no event, however, are any workers with the greater seniority to replace workers with lesser seniority, which replacement will necessitate the transfer or layoff of other workers from their regular jobs in order to carry out the seniority provision.

OVERTIME, HOLIDAY PAY, VACATIONS, ETC.

What have been previously described as fringe issues often are the most contentious matters that arise in the negotiation of a new contract. When an impasse is reached and there is a decision to arbitrate, the parties often do little more than throw the problem in the lap of the arbitrator. They have exhausted their arguments. Sometimes the management just does not want to concede to the union demands and stands on principle. Sometimes the union has no other argument except that its officers and members desperately want some concession.

Hence it will be found, in reviewing any number of arbitration cases on fringe issues in new contracts, that the arbitrators' awards usually state what the issues were and then proceed forthwith to their conclusions and awards with little or no discussion on the contentions of either side. And yet it is just as important to know what various issues have been decided in arbitration proceedings as it is

to learn what arguments and factual points, if any, have been made by the contesting parties.

Just before the end of World War II the furniture workers' union (CIO) and a manufacturer of period furniture reached a deadlock over some of the terms of a new contract.

Among the issues in dispute were the following:

1. Whether work performed in excess of 8 hours in a day should be paid at overtime rates;
2. Whether employees should be required to work overtime without advance consultation with the union and the express permission of the union;
3. Whether any work should be performed on six traditional holidays, and what rate of pay should apply in the event it was decided that work could be done on such days;
4. Whether employees with six months' service should be entitled to vacation pay and if so, what should be the amount of their vacation allowance;
5. What guarantee of work or pay, if any, should be provided for employees who have not been notified to refrain from reporting to work.

The bulk of the evidence presented by both sides consisted of analyses of industry and area practice. There were no limits imposed on the discretion of the arbitrator in making his findings and awards on all of the issues. The arbitrator was merely empowered to formulate the appropriate contract clause on each question.

The provisions to be embodied in the contract were decided by the arbitrator as follows:

Overtime All work performed in excess of 8 hours a day is to be considered as overtime and paid for at the rate of time and one half.

Arrangements with union The union is to be notified when an employee is required to work overtime, but permission need not be required from the union stewards.

Holiday pay A premium rate of time and one half is to be paid for any work performed on the six usual holidays. Since the furniture industry has not established a general practice of paying for holidays not worked, this question is to be referred for negotiation by the parties at some subsequent renegotiation period.

Vacations Employees with six months' service but less than a year's service are entitled to a paid vacation "pro-rated" on a basis of one week or 40 hours' straight-time pay for one year of employ-

ment. (Vacations for persons with more than one year's service should be 40 hours' straight-time pay.)

Call-in pay All employees reporting for work when they have not been notified that their work is not available, shall be guaranteed four hours' work or four hours' pay for the day on which they report.

VACATION PLAN EMBODIED IN CONTRACT

During the long years preceding unionization of most industrial companies, firm after firm inaugurated various employee benefit plans on a voluntary or unilateral basis. With the advent of partial or complete unionization, some concerns wished to abandon all or part of their benefit programs. Others were willing to continue certain plans such as vacations, sick leave, etc., but did not wish their hands to be tied by agreeing to put the terms of these plans into union contracts. When questions of this sort have been brought to arbitration, the usual decision has been that in the absence of compelling evidence for the abolition of a given plan, the plan had to be written into the contract itself.

One of many such decisions was made in a case involving a community transportation company and the street railway union (AFL). Four years before the current contract came up for consideration, the management of this company had inaugurated a vacation plan for hourly rated employees. The previous year, the benefits under the plan had been voluntarily expanded. But the terms of the vacation plan had never been negotiated with the union. Instead, they were merely set forth in a letter from the company to the union.

There was no dispute between the parties as to the adequacy of the present vacation arrangements. All the union wanted was to be assured that the plan would remain unchanged for the duration of the contract. At first the company refused to accede to the union's point of view. Then it agreed to let the matter be decided by arbitration. In this instance, the question of vacations in general was not thrown wide open. All that the arbitrator was authorized to determine was whether or not the present plan should be written into the contract and remain in effect for the life of the contract. The arbitrator found that where an appropriate vacation plan has been in effect it is a proper subject for inclusion in the contract. He accordingly directed that the vacation plan for this company, as

previously set forth in a letter from the management to the union, be incorporated in the current contract.

BASIS FOR COMPUTING VACATION PAY

Even when there is agreement on the principle of vacations for hourly rated workers in general, disputes occasionally arise as to the basis on which the amount of vacation pay shall be determined. For instance, where piecework workers are involved, should their vacations be at their base rates or average hourly earnings? Similarly, should vacation pay be computed on the normal work week of 40 hours, or on the basis of average hours actually worked during the previous month, quarter, or year?

These questions arose when a new contract was being negotiated by a metal working company and the electrical workers' union (CIO).

The previous contract was silent on these questions, but the company had followed its previous practice of paying base rate and not average hourly earnings to incentive workers. Thus, when these employees took their vacations, the amount of vacation pay received by them was substantially less than the amount their earnings would have been if they had remained at work. Naturally, the union sought to have the arbitrator award average earnings as the basis for computing vacation pay.

The company relied not only on the adequacy of its past practice, but upon the practice of its competitors. It cited in particular four competing firms who paid vacation allowances on hourly base rates and not on average earnings.

In deciding the matter, the arbitrator thought it advisable to make an independent inquiry into the prevailing area practice and industry practice. He found that the preponderant number of companies concerned paid their employees average hourly earnings instead of base rates when the earnings were in excess of base rates. Accordingly he ruled that vacation pay should be computed on the basis of average hourly earnings, as this was the more equitable arrangement.

It happened that in this particular case the question as to whether the vacation period should be the normal work week or average hours actually worked, did not arise. Had it been brought before the arbitrator, he would undoubtedly have used the same basis for deciding the matter as he did in making his award on the sole question before him.

SPECIAL CONDITIONS FOR HOLIDAY PAY

As has just been mentioned in connection with a dispute over vacations, loosely or incompletely worded contract clauses may give rise to new disputes when the contract is coming up for renegotiation. Even on such an apparently simple question as payments for holidays not worked, sharp disagreements may develop if the basis for making such payments is not detailed in the contract.

The electrical workers' union (CIO) and a metal working plant could not reach an agreement, either on the amount of holiday pay or on the conditions for eligibility for holiday pay. These issues were in dispute, as well as the basic question as to the number of paid holidays to be written into the contract.

Under the previous contract, it was simply provided that there should be three paid holidays. No restrictions were attached. Thus, employees received the holiday pay, regardless of whether they had been absent on any days during the week when the holiday occurred.

In negotiating the new contract, the management was willing to accede to the union's demand to increase the number of paid holidays from three to six. But it sought to limit the eligibility for such holidays to employees who had worked both the day prior to the holiday and also the work day immediately following the holiday.

In the opinion of the union, this restriction would deprive many deserving and faithful employees of holiday pay because of unavoidable absences.

The union further proposed that the rate of pay received by employees for holidays not worked be equivalent to their average hourly earnings, instead of their base rate. The difference between the two methods of payment amounted to more than 20 cents an hour. Apart from the obvious fairness of this proposal, the union argued, current practice in the area and in the industry was to pay average hourly earnings, rather than the base rate for such a purpose.

On the company's side, its spokesmen pointed out that its experience during the previous year indicated that many employees stayed away from work the day before and the day after a holiday, thus causing a considerable loss of production. The loss was aggravated by the fact that in many instances the work of other employees who reported for duty depended upon the work of employees who were absent.

As to the union's demand that average earnings be paid for holidays instead of base rate, the company insisted that this was not properly before the arbitrator, since the question as submitted to arbitration made no reference to rate of pay, but instead related to the number of paid holidays and conditions for eligibility.

The arbitrator, in awarding six paid holidays, concluded that some eligibility requirements were warranted. He therefore directed that a clause be inserted in the contract requiring an employee to be at work on either the regular working day preceding the holiday or the day following, in order to receive holiday pay.

On the second issue, namely the basis for payment, the arbitrator concluded that under the terms of the submission he was not authorized to order any change in the method of pay previously in effect.

12. WHEN TO MEDIATE

Each year thousands and thousands of law suits are settled without the necessity of getting a verdict from judge or jury. Many are settled out of court before a trial actually starts, when the party with the apparently weaker case realizes that the other side means business and is going through with his law suit. Then, good judgment may dictate that the former come forward with the best possible compromise offer.

In many instances, however, each side is genuinely convinced of the rightness of its position. Not until the actual trial itself, when factual evidence and arguments are being presented, does it seem to one side or the other that possibly it may be wrong, or at least not 100 per cent right. Then the principals or their legal advisors may want to try to get together with their adversaries. Perhaps the judge himself gets the attorneys together in a private session and suggests the desirability of a compromise settlement. There is nothing out of order in such tactics, either in strictly legal proceedings or in arbitration proceedings.

Of course, mediation efforts have to be handled by tact and finesse on the part of all concerned. The arbitrator himself may call a recess and ask the chief spokesmen if they want to try to work out a compromise. If either side objects, it is his duty to proceed with the hearing, and render his decision. If both sides are willing to try to settle the matter, the arbitrator will refrain from participating in any discussion concerning a compromise. He will encourage the parties to endeavor to reach an accord, if possible, but will stay out of such discussions himself, so as not to be put in a position of suggesting a compromise. Or, if they so request, he may sound them out on the acceptability of a compromise solution which he himself suggests. If, however, his solution is unacceptable to either side, it then becomes his duty to resume the hearings and decide the case entirely on the basis of the terms of the submission and the preponderance of the evidence submitted to him.

There is another type of situation when mediation seems to be indicated. That is where the nature of the contract or the terms of the submission permit only one answer. Technically, the answer is the right one. But from the standpoint of fairness and equity, it may be entirely the wrong one. In such a situation, the arbitrator is bound to uphold the letter of the law. And yet, particularly if he is well-known to both parties and his advice and judgment are respected, he may take it upon himself, either in informal conferences or as a part of his written decision, to suggest suitable solutions to be worked out by both sides through direct discussion. With their independent and impartial point of view, experienced arbitrators often can make proposals for the solution of knotty issues that have not occurred to the management and union representatives. It is not always a case of deciding which of the two contesting sides is right.

Suppose a union official has been discharged by the company for flagrantly improper conduct, such as instigating a slowdown or sit-down. In his defense, the union insists there were extenuating circumstances, and demands his reinstatement with back pay. The arbitrator can readily see that there was some merit in the positions taken by both sides. He feels that outright discharge is too severe a penalty. He senses that the management itself would prefer a lesser penalty, but the nature of the contract clause on discharges, and the way in which the question for arbitration was submitted to him, would make it mandatory for him to decide the question by holding the union official guilty or not guilty. If he were found guilty, the conclusion would require that the discharge be sustained. If he were found not guilty, he would have to be reinstated with full pay. Here the arbitrator may well suspend proceedings and suggest to the parties' chief spokesmen that they go in a huddle privately and try to work out a suitable deal. Such a deal might involve for instance a one-month suspension without pay. Then, if the parties do reach an agreement for a one-month suspension, but either of them still wants the arbitrator to make a formal decision for the precedent-setting effect it would have, and both authorize him to do so, he can decide the case officially by entering an award of one month's suspension with loss of pay.

CURTAILING MAINTENANCE WORK

Following a short stoppage in a woolen plant, the management of the plant and the textile workers' union (CIO) brought one of

the issues in dispute to arbitration. At the hearing before the arbitrator, the union sought to have a second dispute arbitrated. The second question was whether the partial discontinuance of work performed by the company's own maintenance department was done in good faith or whether it had been effected to punish some of the employees in this department for previous offenses. When the company raised the objection that nothing in the current contract made such a question arbitrable, the union accepted the company's contention. Nevertheless, both parties requested the arbitrator to hear their respective claims and to hand down a recommendation concerning the problem.

Thereupon the arbitrator discussed the subject with each side individually and with both sides jointly, prior to making his recommendation.

In the course of these discussions it developed that for the previous several years the company had operated a maintenance department with a supervisor instead of craftsmen. These men did all necessary maintenance and repair work and occasionally all of them were assigned to full-time painting jobs.

Two months before the arbitration hearing, the management notified the employees and the union that the maintenance department would either be completely discontinued or sharply reduced in size. All but two of the employees were offered other jobs in the plant. At the same time the company engaged a contracting firm to do a substantial painting job. The company itself supplied the materials and simply paid to the outside firm the wages of four of its employees who were engaged on the job on an hourly basis. At that point, the maintenance department was continued with a crew of the original supervisor, one mason, and one helper.

The union protested the good faith of the company's actions, primarily because the four outside painters were engaged at a straight hourly basis, while the regular employees of the maintenance department, who were qualified to do the work, were not given the opportunity to perform this painting job. The union argued that the maintenance department supervisor had become chagrined over the action of some of his employees in refusing to comply with certain requests he had made.

The company's main argument was that it had entire discretion under the contract, as well as the inherent management right, either to have painting or any other type of maintenance work done by

its employees or, if it so desired, by employees of outside contracting firms.

The following opinion and recommendations were made by the arbitrator:

The arbitrator is bound to take cognizance of the statements made by the union and without intending to lay down any hard or fast rule as to what might be the company's obligation in any future situation necessitating the discontinuance of a department, in this instance, however, the action of the company was ill-advised and was, to say the least, premature to the extent that the workers were told that the work they had heretofore done was to be discontinued, while actually the work was not only not discontinued, but was being performed by other workers who were being paid by the company on a straight hourly basis and to whom the company supplied all the necessary materials.

There was no evidence introduced that the "contractor" received any compensation for supervision, nor that there was any agreement that the work would be performed for a definite lump sum, or in a given number of days. It appeared that the work was being paid for to several workers, who worked in combination and who were paid a straight hourly pay and time and a half for overtime in excess of over forty hours a week.

The arbitrator earnestly recommends that the company and the union confer and endeavor to reach an understanding relative to the discontinuance of this department.

The union is urged to consider the company's right if the work has decreased requiring a lesser number of workers, that these workers may be transferred or dismissed.

The company is urged to consider that the workers, who have been in the employ of the company for many years, are entitled to preference over outsiders on their regular work.

Suffice it to say that the recommendations of the arbitrator were whole-heartedly accepted by both sides.

PROPOSED SOLUTION FOR PRODUCTION PROBLEM

As has already been suggested in this chapter, sometimes arbitrators have to hue to the line in interpreting a contract, but, in the course of hearing the evidence, come up with a logical solution for a problem that has to be made as a recommendation rather than an order.

A board of arbitration reached this conclusion in a case involving a leather manufacturing company and the fur and leather workers' union (CIO). The union had taken to arbitration this succinct question: Does an inequity exist in the production rate on the spray machine?

According to the union, just before the current contract went into effect the processing of a certain kind of large leather skins had been transferred from a different type of machine to the so-called spray machine. This process had previously been performed on a piece-work basis, but was now being performed by operators on a straight hourly rate. Their rate was 18 cents less than the average earnings of the workers previously doing the processing of the skins.

It was the contention of the union that the company had set as a standard hourly output, namely 33 dozen large skins per hour, an output that was grossly excessive. It cited as a comparison the output of 35 dozen small skins per hour, and insisted that 24 dozen large skins would represent a proper hourly output.

After taking pains to describe fully to the arbitrator exactly how the spray machine operated, the company spokesman went on to demonstrate that in their opinion the actual physical effort under the new method was less than when the same work was performed on a different machine. Then they made the point that there had been no change at all in the operation since the current contract had gone into effect. Consequently there was no warrant on the part of the union for the contention that the work load presented an inequity. The management accordingly argued that the union's original grievance was not in fact arbitrable. It explained, moreover, that it had agreed to have the question arbitrated in the hope and expectation that the company, through the arbitration proceedings, could demonstrate that actually there was an inequity against the company. This inequity, the management contended, arose because the employees were deliberately and concertedly restricting their output to a quota below normal and indeed were threatening further restrictions of their output.

Findings and recommendation of board The arbitration board concluded:

1. That no decisive evidence had been submitted by the union that an inequity existed in the production rate on the spraying machine as compared with the production rate at the time of the signing of the contract.
2. The board did not feel under these circumstances, that it could or should pass judgment on the company's claim in view of the fact that the arbitration proceeding had arisen out of a union grievance and not out of a company complaint.
3. Prior to the filing of the grievance by the union and for a very

long period previously, the management had accepted the rate of production established on the other machine and continued on the spray machine. Having accepted the apparently deliberate restriction of output by the workers before the current contract was negotiated, the company now had no right to complain.

While it felt impelled to reject the union's grievance and to dismiss the company's complaint as well, the arbitration board proposed the following solution to overcome the difficulties brought out by both parties:

The union and the company are to make it possible for the workers to increase their hourly earnings by increasing their output, which the board believes can be achieved without undue exertion, and this can best be accomplished by converting the present cost of production to the company at the established hourly rate into a piece rate, thus enabling the workers to receive added compensation for added output, in conformity with the stabilization regulation now in effect.

The piece rates are to be agreed upon by the union and the company, and appropriate safeguards are to be set up to prevent over-exertion and undue speeding.

COMPROMISE WAGE ADJUSTMENT

When the textile workers' union (CIO) and a woolen manufacturing company could not get together on the wage issues of a new contract, they took the matter to arbitration. They also threw in the question of vacation pay. (The hourly rated employees of this company had never received any vacation benefits.)

The deadlock between the parties was a genuine one. The management had insisted that in the light of the current situation it was unable to grant any wage increase at all. It was operating on a low margin and under then existing OPA price ceilings. Hence it could not pass on any increased labor costs to its customers.

The company offered to disclose to the arbitrator all of its books and records to support its contention that the business could not withstand any increased labor costs. Then its management went on to point out that the concern was seriously handicapped because its weavers operated only two-thirds as many looms as the weavers in competing mills. It further explained that its labor costs were disproportionately high because all of its employees were paid on an hourly basis and its output was lower than other mills where the employees worked on an incentive basis.

In support of its position, the union cited the substantial wage

increases that had been given recently to employees in other woolen mills. The same reason was used in support of its demand for a week's vacation or an extra week's pay in lieu of vacation, for employees whose services could not be spared during the customary vacation season.

While the arbitration hearings were in progress, it appeared to the arbitrator that neither side had exhausted the possibilities of improving efficiency and increasing output and thus making a wage increase justifiable. He suggested they get together privately for this purpose. They did so, and came out with constructive results.

Subsequently they informed the arbitrator they had gotten together on an appropriate basis for wage increases and for vacation allowances as well. At their request he embodied their joint conclusions as to vacations and pay in specific clauses that were to be effective for the period of the next year.

RATES APPLICABLE ON NEW ASSIGNMENTS

To employers and union representatives who are accustomed to accept without challenge the assumed or apparent right of management to determine the work assignments of its employees without any question by the union, the situation confronting a group of shoe manufacturers may seem highly unusual.

An independent union representing their employees had insisted that the shoe manufacturers should be prevented from combining the cutting of leather for two different types of shoes simultaneously. Specifically, the union objected to having both high and low types of Navy shoes cut together. There were collateral questions also. If the cutting of the two types was to be permitted, then the arbitrator was called on to decide whether the work should be done on an incentive basis or day rate. Should he conclude that piece rates were justified, he was further called upon to determine what the piece rates should be.

In this case, the results are of greater general interest than the contentions advanced by both parties.

After hearing all of the evidence and reviewing all the arguments, the arbitrator summarized the questions before him as follows:

1. Should a manufacturer be prevented by the union from cutting the high and low shoes together, when in his judgment it seems desirable to do so?
2. Should the union insist that workers must be paid on an hourly basis when cutting high and low shoes together?
3. Should workers receive additional compensation when required to cut high

and low shoes together, in addition to the rate also agreed upon when high shoes are cut separately?

Then the arbitrator proceeded to rule directly and conclusively on the first two questions. On the third question, he confined himself to a recommendation. He expressed the view that there was some justification for a rate adjustment when cutters were required to work on both high and low shoes at the same time. The amount of the adjustment, he pointed out, was something that should be agreed upon, if at all possible, by the parties themselves. Accordingly he recommended that the employers and the union proceed to work out their own solution to the rate problem. His recommendation was accepted, and the parties very shortly developed a mutually satisfactory piece rate for this type of work.

ADJUSTMENT IN WORK LOAD

Here is another case where the result is of much greater significance than the original issues or the contentions of both parties. It is enough to mention that the case presented to the arbitrator involved a dispute between a woolen mill and the woolen and worsted workers (AFL) over the work load for loom fixers.

There was a contract clause preventing changes in work load except by mutual consent of the company and the union, or as a result of an award by the arbitrator. While the current contract had been in effect for some time, the company modified the work load of a certain group of loom fixers. The union objected and sought a reduction of some 16 per cent in the number of looms assigned to each fixer. The management insisted that all it had done was to revert to a former work load which had been in effect during the life of the contract. Its spokesmen also stated that in checking thoroughly with other mills in the area, the management had found that no mill had a lesser assignment on this particular type of loom than the one the union was then objecting to.

The arbitrator saw merit in the contentions of both parties. At the same time, he felt that a proper solution could be worked out through a compromise. He suggested direct consultations between the management and the union with the view toward modifying their original positions. As a result of these discussions, the company made a new proposal, and this being acceptable to the union, was incorporated in the award of the arbitrator.

The gist of the settlement was that one extra floorman be em-

ployed in the department concerned. By so doing, the work load of the loom fixers would be reduced by approximately one-third. The extra floorman was to be utilized for a 60-day period. During this period there would be close scrutiny of the loom fixers' work load by representatives of the union and the management. At the end of that time, the representatives of both sides were to bring a report to the arbitrator, who, if necessary, would make a final determination. The solution thus worked out was so successful that no final decision had to be handed down by the arbitrator in this case.

ALLOCATION OF WORK ASSIGNMENTS

When two or more groups of workers are in dispute between each other, and with the management as well, as to who should be permitted to perform a particular type of work, the arbitrator called upon to resolve the dispute is usually expected to exercise the wisdom of Solomon. Once in a while it does not take any esoteric knowledge or extraordinary judgment, but rather sheer common sense, plus a thorough investigation of the facts in order to come up with an acceptable solution.

Two separate crafts of stitchers, the members of both of which belonged to the shoe workers' union (CIO), became involved in a controversy with a manufacturer of women's shoes. The so-called "top" stitchers contended that they should have the exclusive right to do all work on the outside stitching of bows. Then there was a group known as "fancy" stitchers who argued that for a long time the bow stitching had been done by them and they had sole jurisdiction over this work. While the two groups of stitchers were arguing among themselves and with the management, no bow stitching was being done at all, and the production schedule of the company was being subject to serious delays.

Presently, the two groups of stitchers agreed with the management to have the case decided by an arbitrator. The only significant fact presented at the hearing was that the top stitchers had been doing the work on the bows for the past few months, but the fancy stitchers had permitted the other group to do this work only on a temporary basis, because the fancy stitchers were completely tied up with other assignments.

The arbitrator was requested by all parties to make a thorough study of the practices prevailing in other shops and to reach his own conclusion on the merits of the case.

On the completion of his independent survey, he reported the following:

1. In other shops, the stitching of bows was done predominantly by fancy stitchers.

2. In some cases, however, this work was being done by top stitchers.

3. In this particular company, the management had followed the practice of allocating the work to whomever it chose, based on the availability of the individual workers, and no question as to its right to do so had ever been raised before the current dispute developed.

4. As to the general practice in the industry, it appeared that the work of stitching bows could be performed with equal skill and facility by either of the two crafts.

The arbitrator concluded that no permanent rules or regulations could be made to apply with satisfaction in a situation of this sort, since the volume of work involved in stitching bows varied to such an extent that it would be difficult to regulate the number of workers to whom this work might be allotted at any given time. He therefore expressed the view that "greater justice and fairer treatment would result to all parties concerned, if management were permitted without interference to allot the work to the craft which had the greatest need for work at the time, taking into consideration the quantity of normal work available to each of the crafts."

Then the arbitrator threw in a clincher. He reported that he had found in his research on the subject that many other shoe firms were farming out the bow stitching to shops which specialized in this type of work, and who maintained inferior working conditions and paid lower rates than those prevailing in this company. To paraphrase a well-known aphorism, "a word to the wise is sufficient." Neither group of craftsmen wanted to "kill the goose that laid the golden eggs." With alacrity and great enthusiasm, the parties agreed among themselves to let the management allocate the work on the basis of the needs of the moment.

REINSTATEMENT TERMS AGREED ON

The presence of an arbitrator serves as a catalytic agent. The parties have disagreed on something and hold steadfast in their positions. They have agreed to disagree. But neither side feels absolutely certain of the soundness of its position. All they may need is someone to suggest a compromise that both parties are really eager to accept. That is exactly what happened in the case of an AFL

foundry workers' union and an iron working company. The case involved the discharge of a single employee.

In the course of arbitration proceedings it developed that the discharged employee, Mr. W., had been notified by mail that his employment was being terminated. The reason for the discharge as advanced by the management was that Mr. W. had not performed his work satisfactorily, that he had been frequently tardy in reporting for work, had left his job before the closing time, and generally had had a substandard record. Moreover, he had left town for a trip to a larger city some hundreds of miles away, and when he had not returned after the lapse of a week, there were rumors to the effect that he had obtained employment elsewhere. It was at the end of his first week of absence that he was notified by mail that he had been discharged.

It was candidly agreed by the union that proper conduct by employees and maintenance of efficiency were highly essential. Their spokesmen proposed, however, that Mr. W. be reinstated on a probationary basis. If, during the probationary period, he had not performed in a workman-like manner, the union would not object to his discharge at the end of a 30-day period. Mr. W. himself personally agreed that if at the end of the 30 days it could be demonstrated that he had not done his work satisfactorily, he would accept his dismissal without complaint.

The management, on the other hand, agreed to reinstate Mr. W. immediately, and if his work record during the next 30 days was satisfactory, to reimburse him for the 20-day period when he was without work following his discharge. After informal discussions produced this settlement, all that there was left for the arbitrator to do, since he approved of the settlement, was to embody its terms in a "memorandum of understanding" by which both parties agreed to abide.

REASONABLE ENFORCEMENT OF WORKING RULES

Here is another situation where the mere chance to voice opinions in the presence of a disinterested and neutral party brought about a settlement of a dispute that seemed to have reached a hopeless impasse.

One Mrs. V. had been discharged by a wool processing company for insubordination and violation of company rules. Her union, the textile workers (CIO), protested this discharge.

Mrs. V. was a shop steward. While, according to the management, she had been a very proficient worker, she had gradually assumed an attitude of defiance. Among other things, she visited the women's locker room frequently and spent an excessive time there. Despite a shop rule prohibiting smoking, and in spite of numerous warnings, Mrs. V. persistently continued to smoke, even in the presence of the matron employed by the company to enforce its rules in the rest room.

After the matron had first warned Mrs. V., she promised she would cooperate and did so for one day. Thereafter she changed her attitude and visited the women's room more frequently, stayed there for long periods, and openly defied the matron's request that she refrain from smoking. On the day when she was discharged, Mrs. V. was found by the matron to be seated on a bench with several other women, all of whom were smoking. The matron addressed all of the women, reminding them that smoking was not allowed and requesting that they please stop. Mrs. V. spoke up resentfully and demanded that the matron stop picking on her. Indeed she got up from the bench and pushed the matron away from her. That was the last straw. The matron complained to a superintendent who, after hearing Mrs. V.'s story, concluded that she had been grossly insubordinate and defiant, and decided to discharge her.

The union argued that there were extenuating circumstances. Its spokesmen asserted that smoking had always been tolerated in the women's rest rooms. When the management suddenly decided to hire matrons to enforce a rule that had been more observed by its breach than by its obedience, the shop committee asked for a chance to take up the matter with its membership at the next meeting.

Before such a meeting could be held, so the union spokesmen maintained, Mrs. V. had been picked on by the matron for a special attack primarily because she was a shop steward and an unusually active union member. Furthermore, the union denied that the matron had been pushed by Mrs. V. Instead it claimed that the matron had pointed her finger at Mrs. V. in an insulting fashion, while not saying a word to the other women who were also smoking at the same time.

At the conclusion of the hearing, a recess was called at the request of the management. When the parties got together again, the arbitrator was informed by the management that upon reconsideration

it had decided to reinstate Mrs. V. to her former position for a probationary period of 90 days, and if her conduct was unobjectionable during the probationary period, then to restore to her full seniority rights. The management insisted, however, that Mrs. V. was not entitled to any pay for the time lost since her discharge.

While the union was agreeable of course to the reinstatement, it still requested the arbitrator to rule on the question of an award for pay lost while Mrs. V. was out of a job. She herself admitted she had made no attempt to obtain employment during her discharge. That circumstance, together with all the other evidence, prompted the arbitrator to deny the union's request for any back pay.

Realizing that the discharge of Mrs. V. was the result of a situation that obviously required corrective action, the arbitrator went on in a role of mediator and advisor, which was acceptable to both parties, to make the following observations:

The arbitrator trusts that this incident will serve to restore the harmonious relationships which have prevailed for an extended period between the union and the company, and will once again impress upon the workers to comply promptly with all reasonable rules promulgated by the company, and will make it clear to all workers that it is the function of the union to seek any desired modification of rules which are considered unacceptable, but that no individual worker can become defiant or disobedient and not become subject to discipline.

Arbitrator urges the company and the union to confer in regard to the problem of allowing reasonable time for visiting locker or rest rooms and thus eliminate abuses and at the same time provide legitimate allowance for legitimate needs.

PENALTY FOR FIGHTING MITIGATED

Fighting is not always confined to altercations between employees. One of the bitterest fights that ever developed in the course of arbitration proceedings occurred when the electrical workers' union (CIO) and a phonograph record producing company engaged in a dispute over the justifiability of the discharge of one Mr. K.

Mr. K. had unquestionably been fighting. The issue in dispute was whether or not he was justifiably provoked and had any warrant to engage in fistcuffs.

According to the union, Mr. K. became embroiled in an argument with Mr. B., a fellow employee, because Mr. B. had made derogatory remarks regarding Mr. K.'s race. The company had tolerated fights in the shops by other workers but, in choosing not

to overlook this particular brawl, had, through its action in discharging Mr. K., improperly discriminated against him.

Furthermore, the union argued, it had never agreed with the company that it was proper to discharge any worker who struck the first blow in the event of an altercation. In the light of what had been going on in Europe, particularly in the last decade, the nature of the remark regarding the race of Mr. K. that was made by Mr. B. could not be dismissed lightly. Hence, Mr. K. had justifiable provocation for striking Mr. B.

Among other things, the management stressed the point that the remark of Mr. B. was not addressed directly to Mr. K., but was merely a reference to the race of the foreman of both of these workmen. Mr. K. took matters into his own hands, drew Mr. B. from his press while it was in operation, and struck him, causing him to lose his balance and suffer a severe cut when he fell to the floor.

More than that, the management pointed out, the union and all of the employees knew of the long-standing rule which called for the discharge of any employee involved in a fight in the plant, providing he struck the first blow. It was ridiculous for the union to contend that the management was motivated by any racial prejudice, as many of its officials were of the same ancestry as Mr. K. himself.

The arbitration proceedings were marked by great bitterness and acrimony on both sides. Insults were frequently exchanged. Indeed, the arbitrator felt impelled to state that he had never encountered such cantankerous attitudes by the parties as had prevailed during these proceedings. He commented that he was unable to put his finger definitely on which side was the more guilty for the sad state of affairs, which had been demonstrated at the hearing as having been indicative of the lack of good relations between the union and the management. But his judgment dictated the conclusion that both sides were responsible, although not equally to the same extent or degree.

The arbitrator went on to give this word of caution:

It behooves each side now to turn over a new leaf, so to speak, and begin to consider each other with respect and regard and make every attempt to improve their mutual relationship through the full realization that they are, to a great degree, inter-dependent and that the welfare of each depends upon the attitude and conduct of the other.

Then the arbitrator proceeded to make his findings. He held that sufficient evidence had not been presented to prove that a rule pro-

viding for the discharge of any worker who struck the first blow in a fight in the plant had been in effect and was known to the union and the workers. Accordingly, he held that the fact that Mr. K. had struck the first blow in an admitted altercation was not in and of itself just cause for the discharge. On the other hand, the arbitrator declared that there was no adequate justification for the action of Mr. K. in pulling Mr. B. away from his press and hitting him. The arbitrator concluded that, regardless of the existence or the absence of a rule providing for the discharge of a person taking the initiative in starting a fight, the company was warranted to apply appropriate disciplinary measures in order to eliminate fights or unruly actions. He concluded that the terms of the contract did not empower him either to uphold the discharge of Mr. K., or to assess a lesser penalty. Thus he felt it necessary to make a recommendation rather than an award. His recommendation was set forth as follows:

1. That Mr. K. be given an opportunity by the company for reemployment in another of its plants, preferably the one referred to during the proceedings as the East Side plant.

2. That he be subject to a sixty-day probationary period, during which time he is to receive the same consideration as all other employees.

3. If, at the end of this probationary period, he has deported himself properly and has refrained from indulging in unnecessary disputes and arguments which have no relation to his duties, he is then to be considered as a regular employee of the company and is to have restored to him all his seniority rights, dating back to the day of his first employment.

4. He is not to receive any compensation for any loss of pay sustained by him during his discharge.

Arbitrator hopes that this recommendation will be received in the right spirit by the company and the union, and will be acted upon favorably by the company, and will serve as an example for everyone involved, so that proper behavior will prevail and the relationship between the union, the workers and the company will improve, and that all unnecessary friction will be permanently eliminated.

Both sides cheerfully accepted the arbitrator's recommendation.

LENIENCY IN CASE OF PILFERING RECOMMENDED

Every once in a while a case is brought before an arbitrator that seems to cry for mediative treatment rather than a binding "yes" or "no" decision. But when a contract states that the arbitrator shall have no power to change or modify any provision of the contract, or to write into it any provision not agreed to by both parties, then any

personal opinion the arbitrator may hold that is not in conformity with the contract between the parties must be set down as a recommendation only.

In the following case between a cotton mill and the CIO textile workers, the arbitrator thought that leniency was called for in the handling of the case, much more than the strict carrying out of the letter of the contract. Still, he was compelled to make a decision within the limitations imposed on him by the contract. He could do no more than to express the hope that a compromise could be effected between the company and the union.

The submission of the union grievance, as presented to the arbitrator, was worded thus:

Mr. T. was discharged on May 3, 1947, without cause. The union asks prompt reinstatement and pay for all time lost.

This case involved a loom fixer who had been employed for eighteen years. He lived in a company-owned house adjacent to a lumber scrap pile which was also owned by the company. One day he was caught carrying home some pieces of wood and was brought into court on a charge of petty larceny. He pleaded guilty, and subsequently was discharged by the company. The union filed a grievance.

At the arbitration hearing, the union stated that the worker was one of many who had been helping themselves to pieces of lumber, to use as kindling, for a long period of time. They had never been told by the management not to do so, and there was no sign warning people to desist from any such act. This lumber was of little value, if any, to the company.

On the day when he was caught, Mr. T. had finished working in his garden at dusk, and had gone across to the scrap pile, as he had done many times previously, and picked up an armful of wood. A policeman confronted him on his way home, arrested him, and took him to the police station, where he was charged with larceny.

Mr. T. was shocked at being charged with a criminal act. He had always prided himself on being an honorable citizen. He had acted as union treasurer and had been trusted with considerable funds, for which he had always made satisfactory accounting. He had a good credit standing and an excellent personal reputation in the community. He pleaded to have this transgression overlooked, now that he knew it was a transgression to take kindling from this pile.

The police were evidently under pressure by the company, the union asserted, for they were unyielding to his plea.

Being unable to afford an attorney to defend him, Mr. T. decided, under advice by the union representative, to plead guilty. He paid a \$15 fine and was released.

After the court proceedings, Mr. T. was formally discharged. At this time, the union attempted to intervene in the worker's behalf and made numerous endeavors to have the company reconsider his case, in the light of the triviality of his offense, and since such punishment would have serious consequences for the human being involved. The pleadings were of no avail. The union brought out that this harsh action by the company would be greatly resented by the employee's fellow workers, and would have a serious effect upon the labor-management relations in the mill.

The union urged the arbitrator to rule that Mr. T. had been discharged without "cause." The man had innocently helped himself to some scrap wood, the monetary value of which, by the company's own statement, was less than 50 cents. While the union was anxious to have the company prevent stealing, still the union considered the imposition of punishment through arrest and conviction, and then discharge, too harsh a penalty for Mr. T.'s having taken such a negligible amount of "company property."

The company stated that it had always been an unalterable rule to remove from employment anyone caught stealing company property. No exceptions had ever been made. This was necessary, since the company employed more than ten thousand workers, and it was important to protect its property against pilfering.

The company spokesmen introduced this rule as evidence and also the contract provision calling for discharge or whatever other disciplinary action the company saw fit to take.

The limitation put upon the arbitrator's powers by the contract was also stressed by the management. The contract provided that the arbitrator should have no power to render a decision the effect of which would change or modify any provision of the contract, nor to write into it any provision not agreed to by both parties.

Stealing was an offense punishable by discharge, the company pointed out. Mr. T. had admitted that he had been guilty of stealing. He knew that the "scrap wood" was sold by the company to various employees at so much a load, therefore it was unquestion-

ably company property and should not be taken without authorization.

Since Mr. T. was a man of responsibility and leadership, on his own admission, he should have set an example to others and notified the company if he was aware of the fact that the wood was being taken, instead of taking it himself.

Furthermore, the company spokesmen said, the fact that Mr. T. had waited until dusk, was evidence enough that he was trying to cover up his act. It was therefore imperative that anyone so apprehended should suffer the consequences.

The company then urged that the arbitrator hold that the company had acted within its rights under the contract in discharging Mr. T.

The arbitrator had to rule in favor of the company. Were he to follow the urgings of the union, he said, he would be substituting his judgment for that of the company, which he was not empowered to do.

The arbitrator did say, however, that in all his extended experience in resolving a great number of discharge cases, he had invariably been given greater latitude in determining the equities of an action than was provided him in this case by the existing contract. He added:

Purely as a friend of the parties, and not as one clothed with any powers to make any determination in this case, the arbitrator expresses the hope that some way will be found by the company to be helpful to Mr. T., after he has already paid the penalty for his offense, in getting him reinstalled as a worthy citizen of the community, and possibly as a regenerated worthy employee, in view of his fine record for 18 years as an employee of the company.

It is surprising enough, but true, that the company did not carry out the recommendation of the arbitrator. It remained adamant in its stand against the union. Needless to say, it is unusual rather than commonplace for a company so completely to disregard any mediative attempts on the part of the arbitrator, once it has officially won its case. But when the issue at stake is to demonstrate that crime does not pay, who shall say whether or not the company was justified?

CARRYING TECHNICALITIES TOO FAR

Suspicion or hostility on the part of the union toward management is likely to breed the same type of attitude on the part of the

employer. Then both sides may be inclined to resort to arm's-length tactics in their dealings with each other. The net effect may be detrimental to all concerned. One side may take a highly technical and unrealistic position and then the other side thinks it has to follow suit.

It took a most unusual situation to bring to their senses the management of a small metal working establishment and a local of the coin and machine workers' union (CIO). Great bitterness and suspicion were engendered in the negotiations leading to the first contract between the two parties. Indeed, so suspicious was the union that it insisted on embodying in the contract a clause to the effect that all notices and communications from the management had to be given in writing by registered mail. The employer took advantage of this technicality and pulled a fast one on the union.

There was a provision in the contract requiring the management to notify the union when any employees were to be hired. If the union could not furnish the employer with an experienced workman within twenty-four hours after receipt of notice, then the employer was free to hire someone in the open market. This provision was qualified by the general requirement that all notices be given in writing by registered mail.

It happened that one day a vacancy occurred, and in accordance with the strict requirements of the contract, the head of the company had dictated a letter to the union. The business agent of the union was in the office of the proprietor at the time the letter was ready for his signature. Instead of mentioning the vacancy to the business agent, the proprietor signed the letter and sent it out by registered mail. Because the following day was Saturday and the next Monday was a religious holiday, the business agent did not get the letter until the following Tuesday. Meanwhile, taking advantage of its contractual right, the company had hired a new employee. When approached by the union, the management insisted that it had lived up to the letter of the contract, and therefore rejected the union's demand that the recently hired person be replaced by a candidate acceptable to the union.

The arbitrator had no option but to uphold the management's action. The union, so the company spokesmen pointed out, had insisted that all notices be given in writing. Therefore it did not have a leg to stand on when it accused the management of bad faith in not giving oral notice to the business agent that a new employee

was to be hired. In other words, the union was "hoisted by its own petard."

During the course of the proceedings, it became quite apparent to the arbitrator that there was a great need for a better understanding and for a wholesome and sympathetic relationship between the parties. Accordingly, he took occasion to point out that:

From a strictly legal or technical angle the employer has complied with the provision of the contract pertaining to giving the union first preference by sending the registered letter. However, by abstaining from making the verbal request simultaneously when the opportunity was available it would appear that the technical compliance with the contract provision was not accompanied by a real genuine attempt which would have left no room for questioning the company's intent.

The arbitrator cannot rule that the company has violated the contract. The arbitrator recommends that every effort be made by the company and the union to improve their relationship and to avoid in so far as it is possible such acts that will create any suspicion or accusation that will interfere with continuous and uninterrupted production in which the company is engaged.

Subsequent contacts with this concern and the union representing its employees demonstrated to the arbitrator without question that the advice he felt impelled to give had most salutary effects.

DISCIPLINARY ACTION AFTER WORK STOPPAGE

Ordinarily, when a work stoppage occurs in violation of the contract, the tendency of management is to discharge or otherwise severely punish the persons thought to be the ringleaders. If a shop steward appears to be directly involved in the situation, he is most likely to be singled out for special punitive treatment. It always behooves management to stop and find out whether the tactics of the union leader were to foment or encourage the stoppage, or whether he was not in fact trying to impress his fellow workers with the necessity of complying fully with their contract obligations.

A serious misunderstanding arose between the management of a bronze manufacturing company and the iron workers' union (AFL). Because of the cancellation of a large portion of a war contract, the management thought it necessary to effect an immediate reduction of the normal hours in the work week. Counting overtime allowances, this curtailment in work time resulted in a reduction in the employees' earnings of more than 25 per cent. Notice was given to the employees a half hour before the regular quitting time. The following morning, when the shift began, the management

noted that a group of employees was standing around arguing with each other and doing no work. All the men in the group were at once notified to get on their jobs immediately, and when they refused to do so, they were escorted to the plant office, where they were forthwith discharged.

Among those of the group that were fired was the shop steward. It was subsequently learned that the shop steward, Mr. L., had been urging the men who had come to him for advice on the morning of the discharge, to go to work immediately. Mr. L.'s discharge was then at once rescinded. He in turn refused to go back to work unless the others who had been discharged with him were likewise reinstated.

At the arbitration hearing, the union spokesmen maintained that while the company had a perfect right to lay off employees when the unavailability of work warranted it, still the workers should have been treated with more consideration, and not just abruptly informed they were laid off, with no reason given. Naturally they had become quite agitated, and had gathered around their steward to discuss whether or not something might be done about their plight.

On the company's side was the undoubted fact that the employees had engaged in a stoppage and had refused to go back to their machines when ordered to do so, thus making themselves guilty of insubordination. Regardless of whether or not the steward, Mr. L., had been trying to persuade the employees to go back to work, or had been instigating the stoppage, the fact remained that when he was directed to resume his work he also refused to do so.

While the hearing was still under way, it became plain to the arbitrator that different tactics on the part of the management in notifying the men of the layoff, as well as the reason therefor, could have averted the disturbance that occurred. Similarly, as the arbitrator pointed out to the union in the presence of the management, "the deliberate stopping of the work by the men upon their being informed that the work schedule would be reduced, and their refusal to start work on the following day, is a very serious offense, which a responsible union should not tolerate, and in fact which responsible union members should not indulge in, as there is ample machinery provided for the consideration of any complaint or grievance, and the failure to reach an agreement between the union and the corporation can always be disposed of by arbitration."

The comments and observations of the arbitrator led both parties to try to reach an amicable solution. The arbitrator participated in their discussions, and the result was an agreement to settle the matter by having the arbitrator hand down as his decision the following:

1. Mr. L. was to be re-employed immediately, but was not to act as shop steward for a period of at least 60 days.
2. At the expiration of the 60-day probationary period, the arbitrator was to receive from the union and the corporation a report relating to Mr. L.'s conduct during this period, and on the basis of the report, the arbitrator would decide whether or not Mr. L. should be reinstated as shop steward.
3. One of the other chief participants in the stoppage was to be reinstated by the company in another plant.
4. A third participant would be given consideration for re-employment in another plant, should he make application.
5. All the other discharges would stand.

BASIS FOR GOOD MANAGEMENT-LABOR RELATIONSHIPS

Throughout this chapter typical instances have been cited to show how management and unions can really get together in settling their own differences with the aid of an arbitrator as impartial advisor.

Sometimes the parties that have to deal with each other in day-to-day relationships have no disposition to get together. The fault may be on either side. When such a situation develops it may take the intervention of a top official of the company, or a top official of the union, to bring about harmony and mutual understanding.

One notable instance of this sort developed as a result of a dispute between the ladies' garment workers' union (AFL) and a manufacturer of women's apparel. The immediate issue was not at all unusual. Some of the workers who belonged to the union had a grievance. According to the union spokesman, the management had refused to confer with the union officials in an attempt to settle the grievance. Accordingly, the union felt justified in directing all of the employees of the concern to stop work. The stoppage lasted a few days. Then the employees returned to work with the understanding, so the union spokesman asserted, that there would be no discrimination shown against any of the employees. Nevertheless, the management proceeded forthwith to discharge three of the workmen. And it was this action of the management that led to the arbitration proceedings.

The company contended that the shop chairman had admitted

having instructed one of the employees to disobey the orders of his foreman. Because of the employee's disobedience, he was discharged. Thereupon the shop chairman, together with two other union members, ordered the employees in one department of the firm to stage a sitdown strike. A day later these same three individuals directed that all of the employees of the firm go out on strike.

In this particular situation, there was a provision in the current contract expressly prohibiting sitdowns or other stoppages. Accordingly, so the management maintained, the persons responsible for the stoppage had to be severely disciplined so as to serve as an example to the other employees to convince them that observance of the contract and maintenance of shop discipline were absolutely essential.

The union made no formal defense. Instead, because of the unsatisfactory relationships that had obviously prevailed between the officials of the local and the management, the president of the international union himself appeared at the arbitration hearing to explain all of the circumstances and to seek an amicable solution.

The president of the international freely and candidly admitted that the action of the officials of the local had been in violation of the contract and was contrary to the instructions of the international office. He went on to explain, however, that the unwarranted tactics of the local officers had been due mainly to their lack of experience. He argued that they had been punished sufficiently by having been removed from the payroll for a period of about five weeks that had ensued between the date of their discharge and the date of the arbitration hearing. Any further punishment, he pointed out, would be too harsh a penalty under the circumstances. The president of the international then stressed the fact that the company in the past had enjoyed a fine record of wholesome union relationships, and that it was entitled to receive from the union every effort on the part of the membership to fulfill all their contract obligations. He concluded that, in the light of the instructions that had been given to the officers and members of the local, from that day henceforth all differences and disputes would be settled harmoniously either through direct negotiation or through arbitration.

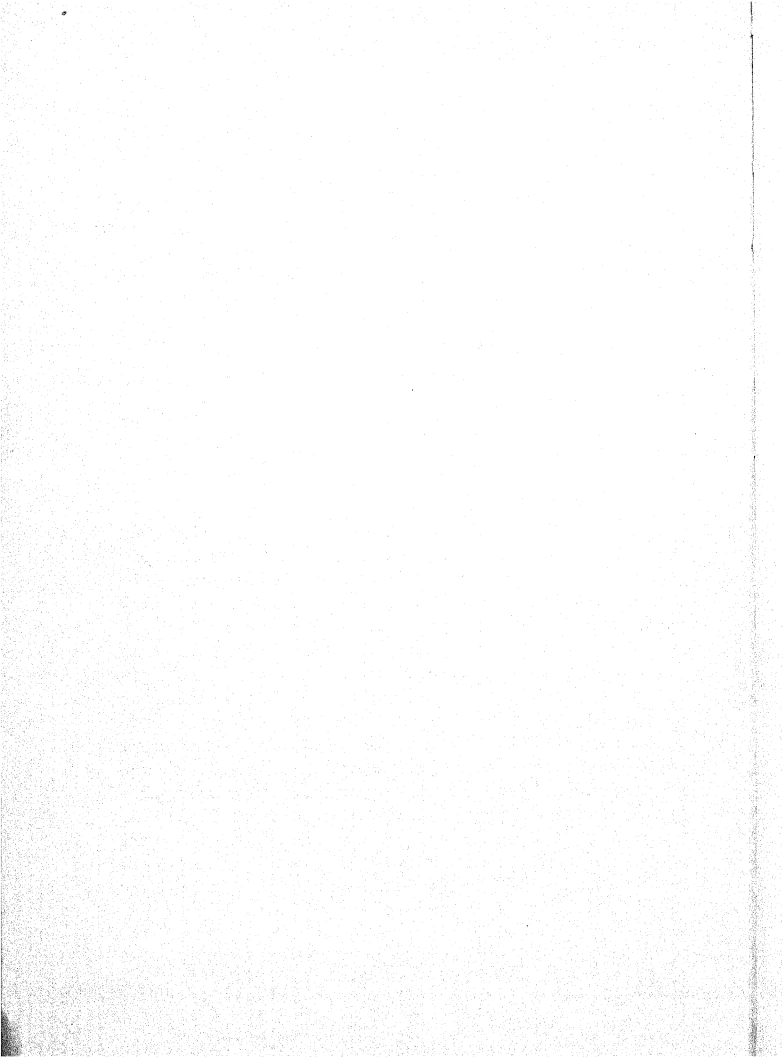
At that point in the proceedings, the president of the international suggested, and the management representatives agreed, that the two parties should endeavor to settle the dispute among them-

selves without requiring the arbitrator to hand down a formal decision. Of course the arbitrator was requested to express his views and he did so. As a result of a short conference in which the arbitrator acted in the role of mediator, the parties reached complete accord. The net result was that the company agreed to reinstate two of the employees without back pay, and the third employee, who had been without question one of the instigators of the stoppage, was to receive severance pay in lieu of reinstatement.

Before the formal proceedings were concluded, both parties asked the arbitrator to make comments in writing as to appropriate tactics to be followed in the future by both sides. His comments embodied the following statement:

Labor, while seeking improved working conditions and earnings, must at the same time know its duties and its obligations to respect and carry out management's directions. Every real or imaginary grievance *must be disposed of through negotiations or arbitration*. Management likewise must through constant action on behalf of all the supervisory personnel *bring conviction into the hearts of all employees* of the firm's intentions, at all times, *to be fair and considerate*.

The nature of arbitration proceedings in general makes it difficult if not impossible to resort to abstract generalities as to how cases should be prepared, presented, or decided. Depending upon the terms of submission agreed to by both parties, or depending upon the language of the contract to be interpreted, or depending upon the nature of the new issue to be decided, the arbitrator has to limit himself to deciding questions which he has been authorized to decide. If, however, management and labor would always attempt to understand the point of view of the other side and diligently strive to reach accord on the basis of justice and fair play, such advice as the arbitrator felt impelled to give in this case would be quite superfluous. The goal of all competent and successful arbitrators is to work themselves out of a job. If, in presentation of the cases discussed in this and previous chapters, any useful contribution has been made toward the attainment of that goal, this arbitrator will feel more than repaid for his efforts in summarizing some of the cases in which he has been privileged to participate.



CASE MATERIAL

The cases decided by the arbitrator or by a board of arbitration that have been considered or summarized in the preparation of this book run into the many hundreds. The companies and the unions involved are listed in Appendix A and Appendix B.

APPENDIX A

Companies Involved in Arbitration Proceedings

- A.B.C. STEEL AND WIRE COMPANY
New York City, N. Y.
- AIRWAY MANUFACTURING CORPORATION
Newark, N. J.
- ALDRICH MANUFACTURING COMPANY
Charlton City, Mass.
- ALGY SHOE, INC.
Everett, Mass.
- AMALGAMATED BANK OF NEW YORK
New York City, N. Y.
- AMERICAN BANK NOTE COMPANY
New York City, N. Y.
- AMERICAN HARDWARE CORPORATION
New Britain, Conn.
- AMERICAN HIDE AND LEATHER COMPANY
Lowell, Mass.
- AMERICAN LADY CORSET COMPANY
Detroit, Mich.
- AMERICAN LOCOMOTIVE COMPANY
Schenectady, N. Y.
Diesel Engine Division
Auburn, N. Y.
Dunkirk, N. Y.
Latrobe, Penn.
- AMERICAN OPTICAL COMPANY
Southbridge, Mass.
- AMERICAN TABLE MANUFACTURING COMPANY
Everett, Mass.
- AMERICAN THREAD COMPANY
Kerr Mills, Fall River, Mass.
Merrick Mills, Holyoke, Mass.
- AMERICAN WELDING COMPANY
Carbondale, Penn.
- AMERICAN-WEST AFRICAN LINE
New York City, N. Y.
- AMERICAN WOOLEN COMPANY
Brown Mills, Dover, and Foxcroft, Me.
Vassalboro Mill, Vassalboro, Me.
Shawsheen Mill, Andover, Mass.
Wood Worsted Mill, Lawrence, Mass.
- AMORY WORSTED MILLS, INC.
Manchester, N. H.
- AMOSKEAG LAWRENCE MILLS, INC.
Manchester, N. H.
- ANTON MACHINE WORKS
Brooklyn, N. Y.
- ARGONNE WORSTED COMPANY, INC.
Woonsocket, R. I.
- ARKWRIGHT CORPORATION
Fall River, Mass.
- ARLINGTON MILLS
Lawrence, Mass.
- ARNEL, INC.
New York, N. Y.
- ASHAWAY WOOLEN MILLS, INC.
Ashaway, R. I.
- ASHLAND CORPORATION
Jewett City, Conn.
- ASPINOOK CORPORATION
Hampton Print Division
Easthampton, Mass.
- AUTO-LITE BATTERY CORPORATION
Owen Dyneto Division
Syracuse, N. Y.
- AVON SOLE COMPANY
Avon, Mass.

- BABCOCK & WILCOX COMPANY
Bayonne Works
Bayonne, N. J.
- BATCHELDER & SNYDER COMPANY, INC.
Boston, Mass.
- BATES MANUFACTURING COMPANY
York Division
Saco, Me.
- BATTLE CREEK FOUNDRY COMPANY
Battle Creek, Mich.
- BEGGS & COBB, INC.
Winchester, Mass.
- BELL AIRCRAFT CORPORATION
Burlington Division
Burlington, Vt.
- BENDIX AVIATION CORPORATION
Norwood, Mass.
- BENRUS WATCH COMPANY
Waterbury, Conn.
- BERCO SHOE COMPANY
Campello, Mass.
- BERKSHIRE TRANSIT LINES
Pittsfield, Mass.
- BERNARD APPEL, INC.
Boston, Mass.
- BEYDA & COMPANY, INC.
New York City, N. Y.
- BIGELOW & SANFORD CARPET COMPANY
Thompsonville, Conn.
- BIJUR LUBRICATING CORPORATION
Long Island City, N. Y.
- BIRDSBORO STEEL FOUNDRY & MACHINE
COMPANY
Reading, Penn.
- BLOOM, SAMUEL & SON, INC.
Boston, Mass.
- BONAFIDE GENASCO, INC.
Barber, N. J.
- BOOTT MILLS
Lowell, Mass.
- BOSTON & MAINE TRANSPORTATION
COMPANY
Boston, Mass.
- BOSTON ROYAL PETTICOAT COMPANY
Boston, Mass.
- BOSTON SAUSAGE AND PROVISION COM-
PANY
Boston, Mass.
- BRAMPTON WOOLEN COMPANY
Newport, N. H.
- BRANCH RIVER WOOL COMBING CO.,
INC.
North Smithfield, R. I.
- BRAUN BAKING COMPANY
(Member of Bakers Club)
Pittsburgh, Penn.
- BRIGHTWATER PAPER COMPANY
Adams, Mass.
- BROCKTON BOOT & SHOE COMPANY
Brockton, Mass.
- BROCKTON CUT SOLE CORPORATION
Brockton, Mass.
- BRODY WOOD HEEL COMPANY, INC.
Amesbury, Mass.
- BROWN COMPANY
Berlin, N. H.
- BROWN SHOE COMPANY
Salem, Ill.
- CAMERON MANUFACTURING CORP.
Emporium, Penn.
- CAMPBELL, A. S. COMPANY, INC.
East Boston, Mass.
- CAMPBELL SOUP COMPANY
Camden, N. J.
- CASKET MANUFACTURERS' NEGOTIATING
COMMITTEE
New York City, N. Y.
- CELANESE CORPORATION OF AMERICA
Plastic Division
Newark, N. J.
- CENTER DEPARTMENT STORE
New York City, N. Y.
- CHANDLER, ERNEST
New York City, N. Y.
- CHANDLER OILCLOTH AND BUCKRAM
COMPANY
East Taunton, Mass.
- CHARAK FURNITURE COMPANY
Boston, Mass.
- CHICOPEE MANUFACTURING CORPORA-
TION
Chicopee Falls, Mass.
- CITIES SERVICE OIL COMPANY
Boston, Mass.

- COGSWELL MANUFACTURING COMPANY
West Springfield, Mass.
- COLE-HERSEE COMPANY
South Boston, Mass.
- COLONIAL PROVISION COMPANY, INC.
Boston, Mass.
- COMMONWEALTH SHOE COMPANY
Whitman, Mass.
Gardiner, Me.
- CONNECTICUT CABINET CORP.
Mystic, Conn.
- CONRAD SHOE COMPANY
Abington, Mass.
- CONSOLIDATED PIPE LINE COMPANY
(*Sinclair Company*)
New York, N. Y.
- CONSTANTINE DRESS COMPANY
Boston, Mass.
- CONTINENTAL DIAMOND FIBRE COMPANY
Bridgeport, Penn.
- CRANSTON PRINT WORKS
Cranston, R. I.
- CRUCIBLE STEEL COMPANY OF AMERICA
Halcomb Works
Sanderson Works
Syracuse, N. Y.
- CUMBERLAND UNDERGARMENT COMPANY,
INC.
Cumberland, Md.
- DAN RIVER MILLS, INC.
Danville, Va.
- DANIELSON MANUFACTURING COMPANY
Danielson, Conn.
- DARTMOUTH SHOE COMPANY
Brockton, Mass.
- DAVEGA-CITY RADIO, INC.
New York City, N. Y.
- DECCA RECORDS, INC.
New York City, N. Y.
- DEVONSHEER MELBA CORPORATION
(*Weil Baking Company*)
West New York, N. J.
- DIAMOND IRON WORKS, INC.
Minneapolis, Minn.
- DOLPHIN JUTE MILLS
Paterson, N. J.
- DOTEN-DUNTON DESK COMPANY
Cambridge, Mass.
- DOUGHNUT CORPORATION OF AMERICA
New York City, N. Y.
- DOUGLAS, W. L., SHOE COMPANY
Brockton, Mass.
- DOWNING, THOMAS J. AND SONS, INC.
Buffalo, N. Y.
- DOWNTOWN DRYGOODS JOBBERS ASSO-
CIATION, INC.
Max Feinberg
Goldman and Ostrow
New York City, N. Y.
- DOYLE SHOE COMPANY
Brockton, Mass.
- DRAKE, GEORGE E., BAKING COMPANY
Represented by Bakers' Club of
Pittsburgh
Pittsburgh, Penn.
- DRAVO CORPORATION
Neville Island Shipyard
Pittsburgh, Penn.
- DUREZ PLASTICS AND CHEMICALS, INC.
North Tonawanda, N. Y.
- EATON, CHARLES A., COMPANY
Brockton, Mass.
- ELECTRIC BOAT COMPANY
Groton, Conn.
- ELKLAND LEATHER COMPANY, INC.
Elkland, Penn.
- EMPLOYEES TRANSIT LINES, INC.
Lorain, Ohio
- ENDICOTT JOHNSON CORPORATION
Challenge Factory
Heel Factory
Para Cord Plant
Rubber Reclaim Plant
Johnson City, N. Y.
Ideal Factory, Sole Leather Dept.
Endicott and West Endicott, N. Y.
- ESMOND MILLS, INC.
Esmond, R. I.
- ESSEM PACKING COMPANY, INC.
Lawrence, Mass.
- EVERLASTIK, INC.
Chelsea, Mass.

- FAIRMOUNT CREAMERY CO. OF BUFFALO
Buffalo, N. Y.
- FALES, L. F., MACHINE COMPANY
Walpole, Mass.
- FARREL BIRMINGHAM COMPANY, INC.
Ansonia, Conn.
- FAULKNER AND COLONY MANUFACTURING COMPANY
Keene, N. H.
- FEINBERG, MAX
New York City, N. Y.
- FIELD & FLINT SHOE COMPANY
Brockton, Mass.
- FITCHBURG YARN COMPANY
Fitchburg, Mass.
- JOHN FOOT SHOE COMPANY
Brockton, Mass.
- FOREMAN AND GUMNER, INC.
Boston, Mass.
- HOWARD FOSTER SHOE COMPANY
Brockton, Mass.
- FRANK & SEDAR OF PITTSBURGH, INC.
Pittsburgh, Penn.
- FRENCH WORSTED COMPANY
Woonsocket, R. I.
- GEILACH TANNING COMPANY
Taunton, Mass.
- GENERAL BRONZE CORPORATION
Long Island City, N. Y.
- GENERAL CABLE CORPORATION
Perth Amboy Plant
Perth Amboy, N. J.
- GENERAL SEAFOODS CORPORATION
Boston, Mass.
- GERSTEIN AND COOPER COMPANY
South Boston, Mass.
- GIMBEL BROS.
Pittsburgh, Penn.
- E. J. GIVERN SHOE COMPANY
Rockland, Mass.
- GOLD SEAL SHOE CORPORATION
Boston, Mass.
- GOLDMAN AND OSTROW
(Downtown Drygoods Jobbers Ass'n., Inc.)
New York City, N. Y.
- GOODALL-SANFORD, INC.
Sanford, Me.
- GORTON PEW FISHERIES COMPANY, LTD.
Gloucester, Mass.
- GRACEFORM-CAMLIN CORSET COMPANY
(Associated Corset & Brassiere Mfgs., Inc.)
New York City, N. Y.
- GUERIN MILLS, INC.
Rosemont Division
Woonsocket, R. I.
- HAMILTON WADE COMPANY
Brockton, Mass.
- JOHN HAND & SONS, INC.
T/a Raybrook Mills
Central Falls, R. I.
- HARJER FURNITURE, LTD.
New York City, N. Y.
- HAROLDITE FINISHING COMPANY, INC.
North Dighton, Mass.
- HAWTHORNE GRILL
Lynn, Mass.
- HAYWOOD WAKEFIELD COMPANY
Gardner, Mass.
- HEMPHILL COMPANY
Pawtucket, R. I.
- HENDERSON COTTON MILLS
Henderson, S. C.
- HERMAN SHOE COMPANY
Millis, Mass.
- HILL LALLIN SONS
New York City, N. Y.
- HINGHAM WATER COMPANY
Hingham, Mass.
- HOOD RUBBER COMPANY
(Division of B. F. Goodrich Co.)
Watertown, Mass.
- HOMER COMMUTATOR CORPORATION
Cleveland, Ohio
- JOSEPH HORN COMPANY
Pittsburgh, Penn.
- HUBBARD SHOE COMPANY
E. Rochester, N. H.
- HUDSON PULP AND PAPER CORPORATION
(Moore and Thompson Division)
Bellows Falls, Vt.

HUISKAMP BROS. COMPANY
Keokuk, Iowa

INLAND WATERWAYS CORPORATION
St. Louis, Mo.

INNERSOLE MANUFACTURERS
Brockton, Mass.

INTERNATIONAL SHOE COMPANY

Quincy, Ill.
Hannibal, Mo.
St. Clair, Mo.
Washington, Mo.

Kirkville, Mo.

Sullivan, Mo.

Anna, Ill.

Mt. Vernon, Ill.

Cape Girardeau, Mo.

Sikeston, Mo.

Byron Factory

Manchester, N. H.

Cohas Factory, Central Plant

Manchester, N. H.

Lake Street Factory

Nashua, N. H.

JACOBS MANUFACTURING COMPANY
Hartford, Conn.

JAMAICA BUSES, INC.
Jamaica, Long Island, N. Y.

JAY SHOE MANUFACTURING COMPANY
Cambridge, Mass.

JOAN PLUSH MILLS
Woonsocket, R. I.

JONES AND LAMSON MACHINE COMPANY
Springfield, Vt.

A. D. JUILLIARD & COMPANY, INC.

Atlantic Mills Division

Providence, R. I.

KANE, DUNHAM AND KRAUS, INC.
Washington, Mo.

KAPLAN FURNITURE COMPANY
Cambridge, Mass.

KAUFMANN DEPARTMENT STORES, INC.
Pittsburgh, Penn.

GEO. E. KEITH COMPANY
Brockton, Mass.

GEORGE A. KELLEY COMPANY
Pittsburgh, Penn.

KENT SHOE CORPORATION
Haverhill, Mass.

G. M. KETCHUM MANUFACTURING
COMPANY
Brooklyn, N. Y.

KEYSTONE BAKERY, INC.
West Bridgewater, Penn.

KNAPP BROS. SHOE MANUFACTURING
COMPANY
Brockton, Mass.

KNIGHT LEATHER PRODUCTS COMPANY,
INC.

Boston, Mass.

KRAMER SHOE COMPANY
Haverhill, Mass.

LABOR STANDARDS ASSOCIATION
Pittsburgh, Penn.

LAIRD SCHOBER & COMPANY, INC.
Haverhill, Mass.

LEART, INC.
New York City, N. Y.

LEOMINSTER TOOL COMPANY, INC.
Leominster, Mass.

LEVY, HARRIS
New York City, N. Y.

LIBBEY-OWENS-FORD GLASS COMPANY
Toledo, Ohio

LIDGERWOOD MANUFACTURING COM-
PANY
Elizabeth, N. J.

LIMERICK YARN MILLS
Limerick, Me.

LINDSTROM CORPORATION
Bridgeport, Conn.

LISSON-MELEN COMPANY
Lynn, Mass.

LISTER WORSTED COMPANY, INC.
Stillwater, R. I.

LITTLE FALLS FELT SHOE COMPANY
Little Falls, N. Y.

LONG ISLAND OUTFITTING COMPANY
New York City, N. Y.

LONSDALE COMPANY
Berkeley Plant
Cumberland, R. I.

Blackstone Plant
North Smithfield, R. I.

- LORRAINE MANUFACTURING COMPANY
Pawtucket, R. I.
- LOUIS HEEL COMPANY
Haverhill, Mass.
- LOWENBRAUN, HARRY
New York City, N. Y.
- LUKENS STEEL COMPANY
Coatsville, Penn.
- M.K.M. HOSIERY MILLS, INC.
Rochdale, Mass.
- MACK MOLDING COMPANY
Wayne, N. J.
- R. H. MACY & COMPANY, INC.
New York City, N. Y.
- MAGUIRE INDUSTRIES, INC.
Bridgeport, Conn.
- MAIDEN FORM BRASSIERE COMPANY, INC.
Bayonne, N. J.
- L. V. MARKS & SONS, COMPANY
Vanceburg, Ky.
- MASUREL WORSTED MILLS, INC.
Woonsocket, R. I.
- MAY KNITTING COMPANY
New York City, N. Y.
- MAYBURY SHOE COMPANY
Rochester, N. H.
- McLAIN FIRE BRICK COMPANY
Dando Works Plant
Vanport, Penn.
Champion Works
Buckeye Works
Wellsville, Ohio
- MERRIMAC MILLS COMPANY
Merrimac, Mass.
- MILADY CORSET AND BRASSIERE COMPANY
PANY
(*Corset & Brassiere Mfg. Ass'n.*)
New York City, N. Y.
- MILFORD SHOE COMPANY
Milford, Mass.
- MONOMAC SPINNING COMPANY
Lawrence, Mass.
- MONSANTO CHEMICAL COMPANY
Merrimac Division
Everett, Mass.
Plastics Division
Springfield, Mass.
- MOORE AND THOMPSON DIVISION
(*Hudson Pulp and Paper Corporation*)
Bellows Falls, Vt.
- THE MURRAY COMPANY
South Boston, Mass.
- NASSAU SMELTING AND REFINING Co.,
INC.
Tottenville, S. I., N. Y.
- NATIONAL CASKET COMPANY, INC.
New York City, N. Y.
Cambridge, Mass.
Baltimore, Md.
Asheville, N. C.
- NATIONAL CHAIR COMPANY
Boston, Mass.
- NATIONAL FIREWORKS, INC.
West Hanover, Mass.
- NATIONAL MAT AND MATTING COMPANY, INC.
Wakefield, Mass.
- NAUMKEAG STEAM COTTON COMPANY
Peabody, Mass.
- NEWARK ENAMELING CORPORATION
Bloomfield, N. J.
- NEW ENGLAND PROVISION COMPANY,
INC.
Boston, Mass.
- NEW ENGLAND SPUN SILK CORPORATION
Brighton, Boston, Mass.
- NEW ENGLAND TRANSPORTATION COMPANY
Boston, Mass.
- NEW ENGLAND WOOD HEEL COMPANY
Amesbury, Mass.
- NEW JERSEY PORCELAIN COMPANY
Trenton, N. J.
- NEW YORK AND BROOKLYN CASKET
COMPANY
Brooklyn, N. Y.
- NILES-BEMENT-POND COMPANY
West Hartford, Conn.
- NOANK SHIPBUILDING COMPANY
Mystic, Conn.
- NORTH JERSEY BROADCASTING COMPANY
Paterson, N. J.
- NORWALK LOCK COMPANY
Norwalk, Conn.

- OLD COLONY FURNITURE COMPANY
Nashua, N. H.
- OLD COLONY SHOE COMPANY
Brockton, Mass.
- ORNSTEEN SHOE COMPANY
Haverhill, Mass.
- OTIS ELEVATOR COMPANY
Yonkers, N. Y.
- H. A. PACKARD SHOE COMPANY
Brockton, Mass.
- PARKS SAUSAGE AND PROVISION COM-
PANY, INC.
Boston, Mass.
- PEPPERELL MANUFACTURING COMPANY
Biddeford, Me.
Lewiston, Me.
- PITTSBURGH PLATE GLASS COMPANY
Pittsburgh, Penn.
Creighton, Penn.
Ford City, Penn.
Mount Vernon, Ohio
- PRATT WHITNEY COMPANY
West Hartford, Conn.
- PRECISION FILM LABORATORIES, INC.
New York City, N. Y.
- B. J. PRENTISS Co.
New York City, N. Y.
- PRICE BROS. COMPANY
Boston, Mass.
- QUEENS-NASSAU TRANSIT LINES, INC.
New York City, N. Y.
- RED STAR LINE
Auburn, N. Y.
- REGAL SHOE COMPANY
Brockton, Mass.
- REMINGTON-RAND, INC.
(*Propeller Division*)
Johnson City, N. Y.
- REPOLO OIL COMPANY
(*Sinclair Refining Company*)
New York, N. Y.
- REVERE COPPER & BRASS, INC.
Baltimore, Md.
- REYNOLDS METALS COMPANY
(*Foundry Division*)
Springfield, Mass.
- RHODE ISLAND PLUSH MILLS
Woonsocket, R. I.
- N. H. RHODES, INC.
West Hartford, Conn.
- RIGHTEX FABRICS
New York City, N. Y.
- RITE HEEL MAKERS, INC.
Haverhill, Mass.
- RIVERSIDE WORSTED COMPANY, INC.
Woonsocket, R. I.
- ROCKLAND MANUFACTURING COMPANY
Rockland, Mass.
- ROMAN DRESS COMPANY
Boston, Mass.
- ROSENBAUM COMPANY
Pittsburgh, Penn.
- ST. REGIS PAPER COMPANY
(*Panelyte Division*)
Trenton, N. J.
- SANFORD MILLS
Sanford, Me.
- SCHICK, INC.
Stamford, Conn.
- A. O. SCHOONMAKER INSULATION CO.,
INC.
New York City, N. Y.
- SEELEY TUBE AND BOX COMPANY
Dover, N. J.
- SELBY SHOE COMPANY
Portsmouth, Ohio
- SHARRON METALLIC CORPORATION
Brooklyn, N. Y.
- SHAW WALKER COMPANY
Muskegan, Mich.
- SINCLAIR COMPANIES
(*Sinclair Refining Company*)
Sinclair Prairie Oil Company
Sinclair Wyoming Oil Company
New York City, N. Y.
- C. B. SLATER SHOE COMPANY
Brockton, Mass.
- SLOAN BLABON CORPORATION
Trenton, N. J.
- SOMERSWORTH SHOE COMPANY
Somersworth, N. H.

- SOUTHEASTERN MASS. SHOE MANUFACTURERS ASSOC.
Brockton, Mass.
- SPORTWELT SHOE COMPANY
North Easton, Mass.
- SPRING PRODUCTS COMPANY
Everett, Mass.
- SPRINGFIELD UPHOLSTERY WORKS, INC.
Springfield, Mass.
- STACY ADAMS SHOE COMPANY
Brockton, Mass.
- STACY MACHINE WORKS, INC.
Springfield, Mass.
- STERLING BUTTON COMPANY, INC.
New York City, N. Y.
- M. T. STEVENS COMPANY
Pentucket Mill
Haverhill, Mass.
North Andover, Mass.
- STEWART STAMPING CO.
Yonkers, N. Y.
- H. C. STILLMAN SHOE COMPANY
Lawrence, Mass.
- STONE TARLOW COMPANY
Brockton, Mass.
- SUNRAY YARN COMPANY
New York City, N. Y.
- HIRAM SWANK'S SONS
Clymer, Penn.
- TABER INSTRUMENT COMPANY
North Tonawanda, N. Y.
- THE TELEREGISTER CORPORATION
New York City, N. Y.
- TEMPLETON RADIO COMPANY
New London, Conn.
- TEXTRON, INC.
Nashua Mills Division
Nashua, N. H.
Easthampton, Mass.
China Division
Suncook, N. H.
- TRAILWAYS OF NEW ENGLAND, INC.
West Springfield, Mass.
- TRAWLER BELMONT, INC.
Boston, Mass.
- TRAWLER NEPTUNE, INC.
Boston, Mass.
- UNEEDA CREDIT CLOTHIERS
New York City, N. Y.
- UNION CUTLERY COMPANY, INC.
Olean, N. Y.
- UNION ENGINEERING CORPORATION
Hoboken, N. J.
- UNITED PARLOR FURNITURE COMPANY
Chelsea, Mass.
- UNITED SHOE MACHINERY CORPORATION
Beverly, Mass.
- UNITED STATES RUBBER COMPANY
Passaic, N. J.
Providence Plant
Providence, R. I.
- UNIVERSAL STAMP AND STATIONERY COMPANY
Newark, N. J.
- VALLEY MOTOR TRANSIT COMPANY
East Liverpool, Ohio
- VULCAN DETINNING COMPANY
Neville Island Plant
Pittsburgh, Penn.
- WASHINGTON GAS LIGHT COMPANY
Washington, D. C.
- WASHINGTON SUBURBAN GAS COMPANY
Washington, D. C.
- WATSON ELEVATOR COMPANY
Englewood, N. J.
- WEBSTER SPRING COMPANY
Webster, Mass.
- WESSELL MANUFACTURING COMPANY
Scranton, Penn.
- WEST VIRGINIA PULP & PAPER COMPANY
Luke, Md.
Covington, Va.
New York City, N. Y.
- WEST WARREN THREAD WORKS, INC.
Westfield, Mass.
- WESTINGHOUSE AIRBRAKE COMPANY
Wilmerding, Penn.
- W. F. WHITNEY COMPANY, INC.
South Ashburnham, Mass.

WICO ELECTRIC COMPANY
West Springfield, Mass.

WILKES-BARRE LACE MANUFACTURING
COMPANY
Wilkes-Barre, Penn.

WILTON WOOLEN COMPANY
Wilton, Me.

WINCHENDON FURNITURE CORPORATION
Winchendon, Mass.

WIND INNERSOLE AND COUNTER COM-
PANY
Brockton, Mass.

WOONSOCKET FALLS MILL, INC.
(Clinton Street Branch)
Woonsocket, R. I.

E. T. WRIGHT AND COMPANY
Brockton, Mass.

WUSKANUT WORSTED CORPORATION
Farnumsville, Mass.

APPENDIX B

Unions Involved in Arbitration Proceedings

AMERICAN COMMUNICATIONS ASSOCIATION, INC.

New York City, N. Y.

AMERICAN FEDERATION OF LABOR

Federal Local 22539—Manchester, N. H.

Federal Local 32105, 2194—Boston, Mass.

Federal Local 22694—West Hanover, Mass. (Fireworks & Munitions Workers' Union)

Federal Local 23037—Dover, N. J. (Cannisters Union)

Federal Local 21669—Olean, N. Y.

ATLANTIC FISHERMEN'S UNION—Affiliated with SEAFARERS' UNION OF NORTH AMERICA, AFL

Local 2154—Boston, Mass.

AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UNITED, CIO

Local 387—Norwood, Mass.

—Syracuse, N. Y.

Local 999—Burlington, Vt.

BAKERY DRIVERS' UNION, AFL

Local 485—Pittsburgh, Penn.

BANNER PROTECTIVE ASSOCIATION

Pawtucket, R. I.

BOOT AND SHOE WORKERS UNION, AFL

Keokuk, Iowa

Anna, Ill.

Boston, Mass.

St. Louis, Mo.

BRICK AND CLAYWORKERS OF AMERICA, THE UNITED, AFL

Local 482—Clymer, Penn.

Local 539 }
and 767 } Vanport, Penn., and Wellesville, Ohio

BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, INTERNATIONAL ASSOCIATION OF, AFL

Local 455—Long Island City, N. Y.

CAMBRIDGE SHOE WORKERS LEAGUE

Cambridge, Mass.

CARPENTERS AND JOINERS OF AMERICA, UNITED BROTHERHOOD OF, AFL

Local 2326—(Ship Carpenters, Joiners and Builders) Mystic, Conn.

Local 3128—(Casket Makers Local) Brooklyn, N. Y.

Local 1728—(Casket Makers Local) Brooklyn, N. Y.

CHEMICAL WORKERS OF AMERICA, UNITED, CIO

New York, N. Y.

COIN MACHINE EMPLOYEES UNION, UNITED

Local 254—New York City, N. Y.

CORSET AND BRASSIERE WORKERS' UNION (I.L.G.W.U., AFL)

Local 32—New York, N. Y.

DEPARTMENT STORE EMPLOYEES, UNITED, CIO

Local 101—Pittsburgh, Penn.

DISTILLERY, RECTIFYING AND WINE WORKERS INTERNATIONAL UNION OF AMERICA,
AFL

Local 18—Boston, Mass.

ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, UNITED, CIO

Local 225—Bridgeport, Conn.

Local 226—New London, Conn.

Local 299—Hartford, Conn.

Local 232—New Britain, Conn.

Local 251—Unity Lodge, West Hartford, Conn.

Local 271—Beverly, Mass.

Local 272—East Boston and South Boston, Mass.

—Leominster, Mass.

Local 261 } Springfield, Mass.

and 288 }

Local 238—West Springfield, Mass.

Local 439—Bayonne, N. J.

—Bloomfield, N. J.

Local 406—Elizabeth, N. J.

Local 447—Englewood, N. J.

Local 409—Trenton, N. J.

Local 327—Johnson City, N. Y.

Local 227—Long Island City, N. Y.

Local 430—New York City, N. Y.

Local 308 } North Tonawanda, N. Y.

and 312 }

Local 453—Yonkers, N. Y.

Local 735—Cleveland, Ohio

Local 610—Wilmerding, Penn.

Local 218—Bellows Falls and Springfield, Vt.

ELECTRICAL WORKERS, INTERNATIONAL BROTHERHOOD OF, AFL

Local B1164—Perth Amboy, N. J.

ENDICOTT JOHNSON CORPORATION

Sole Cutters, Fine Welt Annex Factory, Endicott, N. Y.

Bed Lasters, Fair Play #1 and #2 Factory, West Endicott, N. Y.

Pieced Lift Heel Builders, Heel Factory, CFJ Annex, Johnson City, N. Y.

Thread Lasters, Challenge Factory, Johnson City, N. Y.

ENGINEERS, INTERNATIONAL UNION OF OPERATING, AFL

Local 849—Hingham, Mass.

FISH WORKERS UNION

Local 635—New York, N. Y.

FOOD, TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA, CIO

Local 80—Camden, N. J.

FOOD WORKERS OF NEW ENGLAND, UNITED
Boston, Mass.

FUR AND LEATHER WORKERS' UNION OF THE UNITED STATES AND CANADA,
INTERNATIONAL, CIO

Local 270—Lowell, Mass.

Local 22—Winchester, Mass.

FURNITURE WORKERS OF AMERICA, UNITED, CIO

Local 154—Ashburnham, Gardner and Winchendon, Mass.

Local 136B—Cambridge, Mass.

Local 132—Lynn, Mass.

Local 137—Springfield, Mass.

Local 416—Muskegon, Mich.

Local 458—New York City, N. Y.

GARMENT WORKERS' UNION OF AMERICA, INTERNATIONAL LADIES, AFL

Local 299—Boston, Mass.

Local 242—Rockland, Mass.

Local 434—Cumberland, Md.

Local 318—Detroit, Mich.

Local 160—Bayonne, N. J.

Local 10 }
and 99 } New York City, N. Y.

Locals 12, 33, 39, 46, 56, 73, 80—Joint Board of Cloak, Skirt and Dressmakers'
Union—Boston, Mass.

GENERAL TEAMSTERS UNION, AFL

Local 249—Pittsburgh, Penn.

GENERAL WAREHOUSEMEN AND EMPLOYEES' UNION, AFL

Local 636—Pittsburgh, Penn.

GLASS, CERAMIC & SILICA SAND WORKERS OF AMERICA, FEDERATION OF, CIO

Columbus, Ohio

Creighton, Penn.

Pittsburgh, Penn.

Toledo, Ohio

HONEST DEAL ORGANIZATION, INC.

East Rochester, N. H.

INDUSTRIAL TRADES UNION OF AMERICA

Masurel Local

Riverside Local

Woonsocket, R. I.

LACE, ACCESSORY AND FINISHERS' UNION, AFL

Local 15393—Wilkes-Barre, Penn.

LEATHER WORKERS INTERNATIONAL UNION, UNITED, AFL

Local 63—Elkland, Penn.

LONGSHOREMEN AND WAREHOUSEMEN'S UNION, INTERNATIONAL, CIO

Series 1572-L—Gloucester, Mass.

MACHINE, INSTRUMENT & METAL WORKERS, AMALGAMATED

Brooklyn, N. Y.

MACHINISTS, INTERNATIONAL ASSOCIATION OF

District Lodge 127, Local Lodges 1557 and 1887—Stamford, Conn.

Local 1730—West Springfield, Mass.

Local 1019—East Liverpool, Ohio

Local 1084—Scranton, Penn.

Lodge 1913—Mystic, Conn.

MACHINISTS, INTERNATIONAL ASSOCIATION OF—*Continued*

Lodge 703—Singac, N. J.
—Stamford, Conn.

MARINE AND SHIPBUILDING WORKERS OF AMERICA, INDUSTRIAL UNION OF, CIO
Pittsburgh, Penn.

MARITIME UNION OF AMERICA, NATIONAL, CIO
St. Louis, Mo.

METAL ENGRAVERS' UNION, INTERNATIONAL
Local 14—Newark, N. J.

MINE, MILL AND SMELTER WORKERS, INTERNATIONAL UNION OF, CIO
Local 262—Waterbury, Conn.

Local 847—Barber, N. J.

Local 729—Tottenville, Staten Island, N. Y.

MINE WORKERS OF AMERICA, UNITED, DISTRICT 50

Local 12999—Baltimore, Md.

Local 12796—Adams, Mass.

Local 12674—Charleston, Ill.

Local 12175—Berlin, N. H.

Local 12666—Newark, N. J.

Local 12652—Marysboro, Ill.

MOLDERS AND FOUNDRY WORKERS UNION OF NORTH AMERICA, INTERNATIONAL,
AFL

Local 381—Springfield, Mass.

Local 132—Minneapolis, Minn.

Local 251—Battle Creek, Mich.

Local 209—Norwalk, Conn.

MOTION PICTURES AND LABORATORY TECHNICIANS UNION, AFL

Local 702—New York City, N. Y.

OFFICE AND PROFESSIONAL WORKERS OF AMERICA, UNITED, CIO

Local 16—New York City, N. Y.

OFFICE WORKERS INTERNATIONAL UNION, AFL

Local 2—Washington, D. C.

OILWORKERS' INTERNATIONAL UNION, CIO

Local 365—(Quincy), Boston, Mass.

Locals 207, 208, 209, 210, 221, 227, 230, 232, 234, 235, 241, 257, 262, 268, 269,
280, 294, 296, 305, 309, 330, 343, 358, 364, 427, 428, 432, 444, 475, 480, 525—
New York, etc.

PACKINGHOUSE WORKERS OF AMERICA, UNITED, CIO

Local 11—Boston, Mass.

PAINTERS, DECORATORS & PAPER HANGERS OF AMERICA, BROTHERHOOD OF, AFL
Brooklyn, N. Y.

PAPERWORKERS OF AMERICA, UNITED, CIO

Washington, D. C.

Covington, Va.

Luke, Md.

Williamsport, Penn.

PLAYTHINGS, JEWELRY & NOVELTY WORKERS UNION, CIO

Bridgeport, Conn.

East Aurora, N. Y.

PRINTING PRESSMEN'S AND ASSISTANTS' UNION OF NORTH AMERICA,
INTERNATIONAL, AFL

Paper Handlers and Straighteners Union No. 1—New York City, N. Y.

- RADIO OFFICERS UNION OF THE COMMERCIAL TELEGRAPHERS' UNION, AFL
New York City, N. Y.
- RETAIL CLERKS INTERNATIONAL PROTECTIVE ASSOCIATION, AFL
Local 1365—Pittsburgh, Penn.
- RETAIL DRY GOODS EMPLOYEES UNION
Local 1102—New York City, N. Y.
- RETAIL, WHOLESALE & DEPARTMENT STORE UNION, CIO
Local 380—New York City, N. Y.
- RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, UNITED, CIO
Local 217—Beverly, Mass.
Local 107—Trenton, New Jersey
Local 250—Wayne, N. J.
- RUBBER WORKERS UNION, AFL
Local 22014—Providence, R. I.
- SALESMEN FURNITURE DEPARTMENT, CIO
Local 101—Pittsburgh, Penn.
- SHIPBUILDERS AND MARINE ENGINEERS OF GROTON
Groton, Conn.
- SHOE AND ALLIED CRAFTSMEN, BROTHERHOOD OF
Cutters Local
Cut Sole Local
Dressers and Packers Local
Rubber Heel and Sole Local
Mixed Local—Whitman, Mass. } Brockton, Mass.
- SHOE WORKERS OF AMERICA, UNITED, CIO
Local 156—Vanceburg, Ky.
Local 1—Fancy Stitchers and Top Stitchers, Boston, Mass.
Joint Board No. 20—Haverhill, Mass.
Local 91—Lawrence, Mass.
Local 43—Milford, Mass.
Local 100A } Hannibal, Mo.
and 185A }
Local 168A—St. Clair, Mo.
Local 110A } Washington, Mo.
and 118A }
Local 140A }
Local 147A } Manchester, N. H.
and 148A }
Local 128A—Nashua, N. H.
Local 83—Johnson City, N. Y.
Local 117—Portsmouth, Ohio
United Heel Workers of America—Amesbury, and Haverhill, Mass.
- SHOE WORKERS ORGANIZATION, INC. INDEPENDENT
Somersworth, N. H.
- SQUARE DEAL ORGANIZATION, INC.
Rochester, N. H.
- STEEL WORKERS ORGANIZING COMMITTEE, CIO
Local 1165—Coatsville, Penn.
Local 2464—McKees Rock, Penn.
- STEELWORKERS OF AMERICA, UNITED, CIO
Local 3571—Ansonia, Conn.
Local 3128—South Boston, Mass.

STEELWORKERS OF AMERICA, UNITED, CIO—*Continued*

- Local 3722—Walpole, Mass.
- Local 3482—(Diesel Engine Division)—Auburn, N. Y.
- Local 2283—Dunkirk, N. Y.
- Local 2054—Schenectady, N. Y.
- Syracuse, N. Y.
- Local 2135—Carbondale, Penn.

STENOGRAPHERS, BOOKKEEPERS, TYPISTS, ACCOUNTANTS AND ASSISTANTS' UNION OF PITTSBURGH, UNITED, AFL
Pittsburgh, Penn.

STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES, AMALGAMATED ASSOCIATION OF, AFL

- Division 988, 1038, 1073—Boston, Mass.
- Division 1318—Springfield, Mass.
- Division 1034—Lorain, Ohio
- Division 52—East Liverpool, Ohio
- Division 285—Steubenville, Ohio

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, INTERNATIONAL BROTHERHOOD OF, AFL

- Local 39, Milk and Ice Cream Drivers and Dairy Employees Union
Buffalo, N. Y.
- Local 449, Truck Drivers Union
Buffalo, N. Y.

UNITED TEXTILE WORKERS OF AMERICA, AFL

- Local 1802—Sanford, Me.
- Local 1813—Brighton, Boston, Mass.
- Local 14—Merrimac, Mass.
- Local 2346—Keene, N. H.
- Local 58—Bridgeport, Penn.
- Local 2459—Cranston, R. I.
- Local 35—Stillwater, R. I.
- Department of Woolen and Worsted Workers
- Local 15—Wilton, Me.
- Brown Mill, Dover and Foxcroft, Me.
- Vassalboro Mill, Vassalboro, Me.
- Shawsheen Mill, Andover, Mass.

Local 1113—Lawrence, Mass.

Federation of Woolen and Worsted Workers

- Local 1802—Sanford, Me.
- Local 2643—Limerick, Me.
- Local 1113—Lawrence, Mass.
- Local 54—North Andover, Mass.

TEXTILE WORKERS' UNION OF AMERICA, CIO

- Local 477—Danielson, Conn.
- Local 60—Jewett City, Conn.
- Local 2188—Thompsonville, Conn.
- Local 305—Biddeford, Me.
- Local 192—Charlton, Mass.
- Local 382—Chelsea, Mass.
- Local 144—Chicopee Falls, Mass.
- Local 459—East Taunton, Mass.

TEXTILE WORKERS' UNION OF AMERICA, CIO—*Continued*

- Local 445 } Fall River, Mass.
- and 1057 }
- Local 40—Farnumville, Mass.
- Local 564—Haverhill, Mass.
- Local 512—Holyoke, Mass.
- Local 227—Lawrence, Mass.
- Local 469—North Dighton, Mass.
- Local 74—Peabody, Mass.
- Local 560 }
- Local 560B } Manchester, N. H.
- and 897 }
- Local 112—Newport, N. H.
- Local 696—Newark, N. J.
- Greater New York Joint Board, New York City, N. Y.
- Local 586—Ashaway, R. I.
- Local 398 } Esmond, R. I.
- and 486 }
- Local 390—North Smithfield, R. I., and Woonsocket, R. I.
- Local 18—Pawtucket, R. I.
- Local 194—Providence, R. I.
- Pittsylvania Joint Board—Danville, Va.

TRANSPORT WORKERS' UNION OF AMERICA, CIO

- Local 100—Jamaica, Long Island, N. Y.

WATERBURY BRASS WORKERS UNION

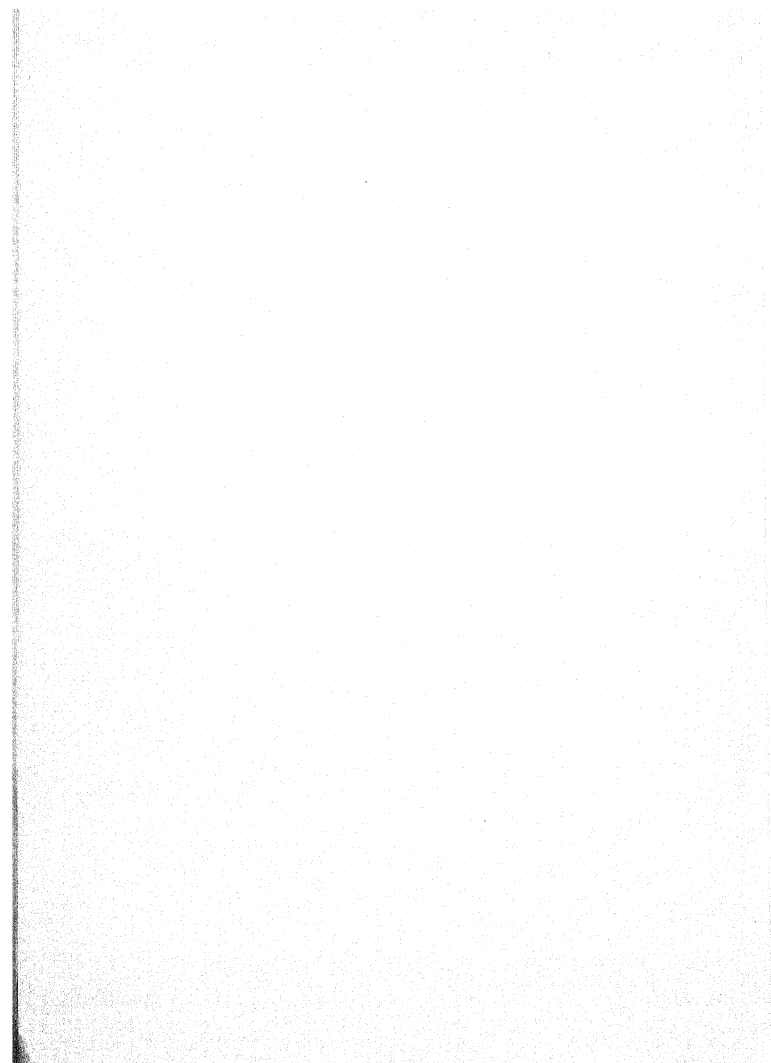
- Waterbury, Conn.

WHOLESALE AND WAREHOUSE EMPLOYEES OF AMERICA, UNITED, CIO

- Local 65—New York City, N. Y.

WIRE AND METALWORKERS UNION, UNITED, CIO

- Local 36—New York City, N. Y.



INDEX

Absentee

extra pay for substitute, 214

Advance Preparations, 30, 31, 40

Arbitrability

- of contract interpretations, 1, 3
- of grievances under prior contract, 270
- of job classifications, 170
- of jurisdictional disputes, 1
- of new contract terms, 1, 10, 272-299
- of non-contract matters, 1, 7, 233-271
- of union membership relations, 12

Average earnings

not guaranteed, 238

Bargaining unit

- disputed coverage of, 96
- promotion outside of, 63

Basis for good management-labor relationships, 321

Basis for participating in grievance meetings, 255

Bulletin boards

union rights to, 107

Choosing an arbitrator, 17

Consent to arbitrate

of employees, 265

Cost of living adjustments, 169, 281

Costs of arbitration, 27

Culpability on both sides, 130

Day work

rate for, 161

Demotions, 31

Direction of working force, 51-87

Discharge

by mutual consent, 137

for "cause," 110

for drinking, 140, 141

for fighting, 115, 312

for insubordination, 126

for low production, 138

for misconduct, 121

inconclusive evidence, 113

modified to layoff, 116, 147, 312

of shop steward, 122, 125

Disciplinary action

after work stoppage, 319

Discrimination, 69, 148

Elections

union shop, 286

Emergency shut-downs, 253

Engineering studies, 40, 159, 190

Enforcement

of working rules, 310

Equal pay for equal work, 165, 219

Evidence, 34, 35, 37

to support discharge, 113

Extra pay

on changed starting time, 216

for doing work of absentee, 214

Extras (*see* Incentive pay)

Fees, initiation, 104

"Fooling around"

discharge for, 136

Forced retirement, 66

Fringe issues

change in starting time, 216

distribution of incentive, 210

equal pay for equal work, 219

guaranteed work or pay, 208

holiday pay versus sick leave, 222

night shift premiums, 224

overtime payments, 220

vacation pay, 227

vacation rights, 230, 231

Good standing

in union, 94

Grievances

individual adjustments of, 248

pay basis for handling, 255

under prior contract, 270

union representation in, 107

Guaranteed earnings, 198, 208

not expressly provided, 245, 262

Guaranteed work load, 198, 208

Holidays

not worked, pay for, 259, 295

pay in lieu of sick leave, 222

Holidays—Continued

- special conditions for pay, 298
- under industry-area pattern, 276

Improper rejection, 56**Inability to pay, 279****Incentive pay**

- adjustments because of competition, 182
- change from day work, 178
- change in job conditions, 187
- change in materials, 196
- disputes under contract, 177-206
- equalization with day workers, 166
- extras, 194
- general adjustments, 240
- guaranteed earnings on work load, 198
- preexisting differential, 183
- reduction in output, 204
- retarded output, 201
- stinting, 190
- use of different materials, 181

Inequities

- inter-company, 168
- intra-plant, 167

Initiation fees, 104**Insubordination**

- discharge for, 127
- layoff for, 132

Job

- belonging to union, 71
- changes in job content, 154
- evaluation, 153, 163
- new, versus speed-up, 242

Laws

- applicable to arbitration, 14
- Taft-Hartley, 283, 285

Layoffs

- discharge modified to, 116, 127
- for faulty work, 119
- for insubordination, 132
- for misuse of company funds, 147
- for sleeping on job, 134
- on emergency shutdowns, 253
- vacation rights after, 231

Leave of absence

- for union duties, 72

Maintenance of membership, 89, 289**Management rights, 56, 63, 66, 74, 75, 85, 87, 96, 101-103, 142, 178, 234, 236****Matters not covered by contract, 1, 7, 233-271****Mediation, 300-323****Merit rating**

- reductions under not permissible, 172

Misconduct

- discharge for, 121

Mutual consent

- for discharge, 137

Night shift premiums, 224**Offers of compromise, 49****Overtime**

- distribution of, 210
- when payable, 220, 295

Past practice, 51**Pattern**

- industry-area, for holidays, 276
- national, for wage increase, 273, 276

Permanent umpires, 23**Piece rates (see Incentive pay)****Precedents, 40****Preparation of cases, 30, 31, 42****Presentation of cases, 43, 46****Promotion**

- at management discretion, 234
- on temporary basis, 60
- outside of bargaining unit, 62

Rates (see Wages)**Refusal to do work assigned, 54****Reinstatement**

- after unauthorized strike, 128
- agreed-on terms, 309

Rejection for unfitness, 56**Reporters, court, use of, 44****Rest periods, 9, 82****Restriction of output, 76****Retirement, forced, 66****Rights**

- management (see Management rights)
- union (see Union Rights)

Schedules, work, 81, 108**Selection**

- of arbitrators, 17-29
- of supervisors, 63, 236

Seniority

- department versus plantwide, 292
- excluded employees, 99
- of supervisors, 290
- privileges, 102
- restored, 118
- versus veterans' rights, 251
- work schedules, 108

Shop stewards

- no special immunities, 122, 125, 148
- special duties, 74, 75

Sick leave

- holiday pay in lieu of, 222

- Sleeping on job
 - layoff for, 134
- Speedup versus new job, 242
- Stenographic transcripts, 45
- Strikes
 - unauthorized, 128
- Submission agreement, 31, 301
- Superseniority, 73
- Supervisors, seniority for, 290
- Suspensions, 142
- Taft-Hartley Act, 283, 286, 288
- Technicalities, 311, 317
- Tripartite boards, 28
- Umpire, permanent, 23
- Unauthorized strike, 128
- Union rights, 80, 83, 88, 91, 95, 96, 101, 102, 107, 178
- Union shop, 71
 - under Taft-Hartley Act, 283, 286
- Union security
 - novel combination of, 285
- Vacations, 295
 - pay for, 227, 297
 - rights, 230
- Veterans' rights, 251
- Wages
 - compromised by mediation, 305
 - cost of living adjustments, 169, 281
 - disputes over, 151-174
 - for new jobs, 152
 - for wash-up time, 218
 - inability to pay increases, 279
 - interplant inequities, 167
 - national pattern for adjustments, 273
 - on reallocation of work, 155
 - on reevaluation, 156
- Work assignments, 78, 85, 87, 101, 308
- Work load, 80, 307
- Work schedules, 81, 108
- Work stoppages, 128, 319
- Working conditions, 83
- Working rules, 30

